

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE**

Appeal(s) Involved:

ST/40/2009-DB

[Arising out of Order-in-Appeal No. 165/2008 dated
17/10/2008 passed by the Commissioner of Central Excise,
Customs and Service Tax (Appeals), Cochin.]

**M/s. SEE FOR YOU SATELLITE
COMMUNICATION**

CHAKKARACKAL P.O.K MOWANCHERRY,
KANNUR

Appellant(s)

Versus

Commissioner of Central Excise

C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN – 682 018.
KERALA

Respondent(s)

Appearance:

Shri Raghavendra, Advocate

G.SAMPATH & S. RAGHU
543, 12TH CROSS, 8TH MAIN J.P NAGARA
2ND PAHASE,
BANGALORE – 560 078.
KARNATAKA

For the Appellant

**Mr. K. Murali,
Superintendent (AR)**

For the Respondent

Date of Hearing: 28/09/2018

Date of Decision: 17/12/2018

CORAM:

**HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER**

Final Order No. 21908 /2018

Per : P. ANJANI KUMAR

Shri Prajesh. A and 20 others were rendering services as individual cable operators and have obtained registration and

were paying service tax and were also claiming small scale exemption under Notification No.6/2005-ST dated 1.3.2005. They have joined hands together and formed a partnership firm under the name and style of "See for Your Satellite Communications" from 1.4.2005 for providing Multi System Operator (MSO) service. The MSO service was liable to service tax from 1.4.2005. A show-cause notice dated 2.8.2006 was issued to the appellants alleging that they have rendered MSO service during the period April 2005 to July 2005 and have not paid service tax of Rs.1,41,612/-. The show-cause notice was confirmed by Order-in-Original No.05/2007 dated 2.3.2007, which was also upheld by the Commissioner (A) vide Order-in-Appeal No.165/2008 dated 28.8.2008.

2. The learned counsel for the appellant contended that the show-cause notice proposed to demand service tax on a private limited company which is not existent and was never registered with the Registrar of Companies as a private limited company, hence, the very basis of making allegations for demand of service tax on the non-existent private limited company is completely vitiated by law and accordingly, the very demand itself on the appellant's partnership firm cannot be sustained. He submitted that the allegations in the show cause notice are not

specific as it alleges that the appellants have provided services of cable operator. The fact of the matter was that the appellants is a MSO and is not providing cable operator service to individual homes. The department has included the value received by the individual cable operators and demanded service tax from the appellant without any allegation for clubbing the value of services provided by the individual cable operators. Further, the value included in the taxable value of appellants is the value received by individual cable operators for providing cable connections to individual households. The whole show-cause notice relies upon the statement of Shri Prajesh A without corroboration by any individual evidence and is not sustainable in view of the below:

- ***CCE, Madurai vs. Valan Beedi Works: 2004 (166) ELT 133 (Tri.-Chen.)***
- ***CCE, Delhi-I vs. Kuber Tobacco India Ltd.: 2016 (338) ELT 113 (Tri.-Del.)***
- ***Savaram D. Patel vs. CC, Ahmedabad: 2014 (312) ELT 193 (Tri.-Ahmd.)***
- ***CCE vs. Gopi Synthetics Ltd.: 2009 (236) ELT 731 (Tri.-Ahmd.)***
- ***CCE, Pune vs. D.B. Electronics: 2005 (188) ELT 470 (SC).***

2.1 The learned counsel submitted that the proceedings have been initiated under the mistaken notion of law. The show-cause notice clearly shows that the appellant is a MSO and is an extended service provide to cable operators. Service Tax has been demanded on the amounts collected through different

persons. He submitted that as there is no intent to evade payment of duty, imposition of penalty does not arise. Moreover, as held in ***CST, Bangalore vs. Motor World: 2012 (27) STR 225 (Kar.)***, penalty cannot be imposed simultaneously under Section 76 and 78.

3. The learned AR reiterated findings of OIO and has relied upon ***S. M. Steel Ropes vs. CCE, Mumbai: 2014 (304) ELT 591 (Tri.-Mum.)*** and contended that demand can be confirmed on the admission of Managing Partner of the firm.

4. Heard both sides and have perused the records.

4.1 We find that the appellants have contended that they were not registered as a firm during the relevant period. The registration has come into effect only from 25.7.2006. However, they have also claimed that they have obtained a registration for service tax on 27.10.2005 in the name of the firm. We find that they have not informed the department that they are not registered with the Registrar of Companies. We find that the original adjudicating authority has given a clear finding that they have obtained a registration No.33/ST/CO/CNR-iii/2005 for providing MSO/cable operator service. Shri Prajesh. A has signed as Managing Partner and stated the form of organisation to be a

company. The proceedings are against See for You Satellite Communication, Chakkarakkal and not See for You Satellite Communication Pvt. Ltd. The original authority has also held that with effect from 10.9.2004 as per the explanation 'Company' means anybody corporate and includes a firm or other association of individuals. Therefore, the averments made on this basis have no relevance.

4.2 The appellants have contended that the amount discussed in the show-cause notice is the sum of individual collections of the cable operators and has no bearing with the service provided by the appellants. It is not understood as to why the Managing Partner has accepted the same to belong to them. We find that Shri Prajesh. A has signed the register record from the office of M/s. World Vision TV Network. Moreover, we find that Shri Prajesh. A has accepted the statement dated 12.8.2005 that the total value of service provided by them was Rs.15,50,000/- from 1.4.2005 to 30.6.2005 and Rs.5,25,000/- for the month of July 2005. He also accepted that the total liability to service tax was Rs.2,11,650/- and the same will be paid by them. He also submitted a register showing connections and collections maintained by them. We find that the appellant

has not made a case for themselves and in view of the contradictions in the appellant's submissions, we have no reason to conclude that the appellants are not chargeable to service tax. We find that the statement was never retracted and the appellants have only averred that it is not supported by other evidence. However, we accept the contention of the appellant that penalty cannot be imposed under Section 76 and 78 simultaneously. Therefore, we hold that one of them should go. Accordingly, we set aside the penalty imposed under Section 76.

4.3 We find that the appellants formed an association and have registered themselves as discussed above as MSO/cable operators and have paid part of the tax liability. We find that the demand of service tax is not only based on the statement of the Managing Partner but is also based on the records / registers retrieved during the investigation. Therefore, we find that there is no merit in the submissions made by the appellants.

5. In the result, the appeal is partly allowed i.e., the demand is confirmed and penalty under Section 76 is set aside and other portions of the order are upheld.

(Order was pronounced in Open Court on **17.12.2018.**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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