CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Appeal No.ST/496/2011

[Arising out of Order-in-Appeal No.228/2011 dt. 24.05.2011 passed by Commissioner of Central Excise (Appeals), Madurai]

B.S.N.L., Tirunelveli — Appellant

Versus

Commissioner of Central Excise,Tirunelveli — Respondent

Appearance :

Ms. S. Sridevi, Advocate
For the Appellant

Ms. T. Usha Devi, AC (AR)
For the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of hearing / decision : 11.10.2018

FINAL ORDER No. 42660 / 2018

Per Shri Madhu Mohan Damodhar

The facts of the matter are that appellant had issued the telephone bills printed through M/s.Mehra Computer Systems Ltd., Chennai. The rate of printing of telephone bills was finalized as under :

i) @ Rs.0.58 per A-4 image without free supply of Bill Form (with free advertisement – 1/5th of backside portion, i.e. The tenderer can use a stationery with 1/5th of the backside portion containing advertisement for printing of telephone bills)

ii) @ Rs.0.68 per A-4 image without free supply of Bill Form (without Advertisement, i.e. The renderer has to use a stationery in which no advertisement should appear)

The appellants finalized the tender at Rs.0.58 per A-4 image. Department took the view that by agreeing to provide space in backside of the bill for commercial advertisement, the appellants have profited at Rs.0.10 per bill and that such activity is liable to service tax under the category of “Selling of Space or Time for advertisement, other than print media” classifiable under section 65 (105 (zzzm) of the Finance Act, 1994. Proceedings were initiated against the appellant by two show cause notices dt. 8.9.2009 and 14.10.2009 inter alia, proposing demand of service tax with interest and imposition of penalty under various of provisions of the Act. These SCNs were disposed of by the original authority vide order No.24/2009-10 dt. 26.02.2010. The adjudicating authority dropped the proceedings initiated in both the SCNs. However in appeal by the department, the lower appellate authority vide impugned order dt. 24.05.2011 set aside the orders of the original authority and held that BSNL are liable to pay service tax on sale of space. Hence this appeal.

2. Today when the matter came up for hearing, on behalf of the appellant, Ld. Advocate Ms. S. Sridevi submitted that BSNL finalized the tender at Rs.0.58 per A-4 image since it would benefit in reduction of printing cost. The difference between the two rates has been wrongly interpreted by the department as ‘sale of space’. The reduction in printing cost of telephone bill is not a consideration as per Section 65 (2) of the Finance Act. Hence appellants are not liable to pay service tax. She further submitted that the space used for advertisement by the

printer has been sold to his customers, on which the printer has paid service tax. This fact was recorded in the Order-in-Original based on the report given by the jurisdiction officers.

3. On the other hand, Ld. A.R supports the impugned order.

4. Heard both sides and have gone though the facts. The appellant BSNL have a very large number of subscribers to whom all the periodical telephone bills are sent. No doubt, BSNL have opted for lower tender of Rs.0.58 per A-4 image whereby they have saved some of their printing cost. Nonetheless, as a consideration for reducing the printing cost the printer puts some advertisement on 1/5th of the portion of telephone bill. It is not the case that advertisements put are those of BSNL themselves or for that matter any public interest messages from the Government. Quite obviously, the printer puts in the advertisements for commercial benefit. This being the case, the saving of Re.0.10 p per bill is nothing but a consideration or indirect income for allowing 1/5th of the telephone bill space to the printer to put in advertisements. The differential amount saved would very much then become the value of taxable service under the category of 'sale of space for advertisement service' in terms of section 65 (105) (zzzm) of the Act.

5. Viewed in this light, we do not find any infirmity in the orders of the lower appellate authority holding that appellants are liable to pay service tax on the sale of space. No merit is found in the appeal for which reason it is dismissed.

(operative part of the order pronounced in court)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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