IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

COURT-IV

Appeal Nos. ST/1040/2011

[Arising out of the Order in Appeal No. 132/2011 dated 05.04.2011 passed by Commissioner (Appeals), Central Excise, Jaipur]

Bharat Sanchar Nigam Limited … Appellant

Vs.

Commissioner of Central Excise & S.T., Jaipur … Respondent

Appearance:

Rep. by - Shri Sameer Agarwal, Advocate for the appellants
Rep. by - Shri Ranjan Khanna, DR for the respondent

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing/ Decision : **23.02.2017**

Final Order No. 52439/2017-DB

Per V. Padmanabhan

The present appeal is directed against Order in Appeal No. 132/2011 dated 05.04.2011 passed by Commissioner (Appeals), Central Excise, Jaipur.

2. The appellant provided telephone service taxable under section 65 (105) (b) of the Finance Act, 1994. They were having a scheme known as 'Tatkal Scheme' under which they were giving early connection if the subscriber gave some extra deposit for providing telephone connection on an urgent basis. After providing such connection when the connection was discontinued

prematurely they were retaining part of the amount. Revenue was of the view that such amount retained form part of the value of the services and based on such reasoning Revenue issued a demand for service tax short paid during the period April 2005 to March 2006. After due proceeding a demand for Rs. 15,49,809/- has been confirmed against the appellant along with interest and penalties. Aggrieved by the order the appellants have filed this appeal.

3. With the above background, we have heard Shri Sameer Agarwal, ld. Counsel for the appellant and Shri Ranjan Khanna, ld DR for the Revenue.

4. Ld. Counsel for the appellant submitted that the amount retained by them was towards capital expenditure that was to be incurred for providing the service and it was not towards consideration for providing telephone service because the charges to customers under Tatkal Scheme were at par with charges for service for similar service provided to customers under other schemes. Accordingly, he submits that the demand raised is without justification.

5. Contesting the above, ld. DR submits that this expenditure is for providing services only and the fact that they have billed for Tatkal Scheme to customers at the rate applicable to other customers cannot alter the situation. He submits that the service tax is required to be paid on the gross value from the service recipient. He also argued that during the relevant period, the explanation ‘b’ to

Section 67 provided that adjustment made by telephone authority from any deposits made be specific and will form part of assessable value.

6. We have considered the arguments raised by both sides. The dispute pertains to the portion of the deposit received from the subscribers under Tatkal Scheme which has been retained by the appellant after the connection is disconnected prematurely. The Revenue is of the view that, that portion of the deposit retained has to be considered towards consideration for provision of service. In support, Revenue has also cited explanation under Section 67 of the Finance Act, 1994 wherein it has been provided that adjustments made by telephone authorities from any deposit made by any subscriber, it will form part of assessable value.

The service tax can be charged only on the consideration received by the service provider towards providing the telephone services under Section 65(105) (b) of the Finance Act, 1994. To decide about the service tax liability on the portion of the deposit retained by the appellant, we need to understand whether such amount retained was towards consideration for providing telephone services. The claim of the appellant is that portion of the amount deposited under Tatkal Scheme which has been retained by appellant is towards the capital expenditure incurred by them for providing the service, was not towards the value of the telephone service. To support the argument they have stated that the charges to customer under Tatkal Scheme were at par with charges of service to the customers under similar schemes. We find considerable force in the arguments advanced by the appellant. There is nothing on record to suggest that the portion of the deposit retained by was towards provision of telephone service. The expenditure under Section 67 providing for adjustments made form any deposit to be considered as part of assessable value was given in a different context. In respect of schemes such as Own Your Telephone (OYT wing) a part of charges for telephone service was recovered by debiting of security deposit. In the facts of the present case, the retention of the portion of deposit towards capital expenditure incurred and not for provision of telephone service. In this view of the matter, we find that the demand for service tax raised cannot be upheld.

7. In view of the above discussions, the impugned order is set-aside and the appeal is allowed.

[Order dictated & pronounced in open court]

(**Ashok Jindal**)
Member (Judicial)

(**V. Padmanabhan**)
Member (Technical)

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