CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench – Court No. – I

Service Tax Appeal No. 22485 of 2014
(Arising out of Order-in-Original No. HYD-EXCUS-004-COM-001-14-15 dt.25.04.2014 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-IV)

M/s Big C Mobiles (P) Ltd
Big C Towers, D.No.1-99/2/B, Plot No.2,
Vithal Rao Nagar, Madhapur, Hyderabad – 500 081 **......Appellant**

VERSUS

Pr. Commissioner of Central Tax
Rangareddy - GST
1-98-7-43, VIP Hills, Jaihind Enclave,
Madhapur, Hyderabad – 500 081 **......Respondent**

Appearance
Shri P. Rama Krishna, Advocate for the Appellant.
Shri A. Rangadham, AR for the Respondent.

Coram: **HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)**
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30054/2026

Date of Hearing: 12.08.2025
Date of Decision: 30.01.2026

[Order per: A.K. JYOTISHI]

M/s Big C Mobiles (P) Ltd (hereinafter referred to as appellant) are in appeal against the OIO dt.25.04.2014, whereby, two SCNs pertaining to period 2007-08 to 2010-11 and April, 2011 to March, 2012 have been decided by the Adjudicating Authority.

2. The brief facts of the case are that in the course of audit, the department noticed that the appellants have not paid certain service tax on 'Management, Maintenance or Repair Service' (MMRS) and 'Business Auxiliary Service' (BAS). It was noticed that the appellants were receiving certain amounts towards activation charges, commission, discounts and incentives from telecom operators, which would be taxable services under the Finance Act, 1994 (hereinafter referred to as the Act). Activation

Charges and Mobile and accessories income were found to be covered under MMRS. In respect of demand under the category of BAS, the income reflected was considered as commission received and hence leviable to service tax. It was also noticed that they had not paid certain amount under the category of MMRS falling under section 65(64) of the Act. In addition, certain amounts availed by them as credit was without any supporting documents.

3. On adjudication, the adjudicating authority examined their submissions and other documents and, inter alia, held that there cannot be any service tax on the amounts reflected in their books of accounts as trade discounts, turnover discounts, quantity discounts, cash discounts, price drop discounts, etc., as they would be relating to trading activity and hence cannot be charged to service tax under the category of BAS. Based on the said observation, the net tax payable was worked out at Rs.76,88,750/- under BAS category.

Year	Total Tax payable as per notice	Liability as above	Tax paid as per notice	Short paid tax demanded in the notice (1)–(3)	Net Tax payable (2)–(3)
	(1)	(2)	(3)	(4)	(5)
2007-08	24,50,063	7,07,236	0	24,50,063	7,07,236
2008-09	23,51,454	23,24,378	2,41,214	21,10,240	20,83,164
2009-10	37,70,212	35,16,949	4,20,958	33,49,254	30,95,991
2010-11	55,97,110	54,02,319	35,99,960	19,97,150	18,02,359
Total	**1,41,68,839**	**1,19,50,882**	**42,62,132**	**99,06,707**	**76,88,750**

4. Under MMRS also, the net amount was recalculated and brought down to Rs.50,16,850/-. The amount allowed and disallowed year wise are indicated as under:

Year	Demand as per notice	Liability as above	Net Tax payable	Remarks
2007-08	3,52,033	2,53,153	2,53,153	After SSI benefit
2008-09	46,65,740	46,65,740	46,65,740	As per notice
2009-10	97,957	95,957	95,957	As per notice
Total	**51,15,730**	**50,16,850**	**50,16,850**	

5. Further, the adjudicating authority did not consider the request for cum-tax benefit as the appellants failed to adduce any evidence that the amount collected for providing services in question was inclusive of service tax and no service tax was collected separately. He, however, allowed benefit of SSI as also income not leviable to service tax and service tax already paid by appellant. Insofar as limitation is concerned, the adjudicating authority, after examining their plea, inter alia, held that in this case, they had not disclosed all the details and there is nothing on record to the contrary and hence sustained the invocation of extended period.

6. Learned Advocate for the appellant has mainly contested that insofar as discounts are concerned, the adjudicating authority has already considered them as relatable to trading activity and hence not leviable to service tax. However, the adjudicating authority has erred in rejecting the a claim of Rs.30,00,145/- towards trade discount received by the appellant during the period 2009-10 for which the appellant had produced Chartered Accountant's Certificate dt.09.10.2013 along with ledger extracts and supporting documents in support that these were in the nature of various types of discounts given by the manufacturer under prevailing schemes. Insofar as demand confirmed under MMRS, they have not disputed the levy of service tax on the activation charges, as such, though initially they had not paid service tax on the activation charges for some time due to conflicting judicial decisions resulting into short payment of service tax under MMRS. Therefore, essentially, they are not disputing the payment of service tax on activation charges and are not contesting the issue. He also clarified that out of demand of Rs.1,27,05,600/-, they have already paid Rs.97,44,564/-, which has also been appropriated. They are not contesting this. They are only contesting; (a) Disputed duty demand of Rs.30,18,384/-, (b) Invocation of extended period and (c) Imposition of penalty under section 78. He has also requested that this is a fit case for waiver of penalty under section 80 of the Act.

7. Learned AR, on the other hand, has reiterated the findings of the adjudicating authority and has also submitted that most of the relief they sought has already been considered by the adjudicating authority in the course of adjudication.

8. Heard both sides and perused the records.

9. The issue involved in this appeal is the leviability of service tax on certain discounts received by the appellants from the mobile company and distributors, as also, certain payments received towards activation charges and other miscellaneous income. We find that essentially, as far as discounts are concerned, their argument has already been considered and allowed by the adjudicating authority by treating the said income as relatable to their trading activity or sale of mobile phones, which cannot be charged to service tax. The department has not objected to this observation and findings of the adjudicating authority. Insofar as activation charges are concerned, the appellants themselves have accepted that they had paid service tax for some time but stopped paying due to various conflicting orders passed in this regard by different benches and the issue was finally decided by the Hon'ble Supreme Court in the case of BSNL Vs UOI [2006 (3) SCC 1] and Idea Mobile Communication Ltd Vs CCE [2011-VIL-17-SC]. They are essentially pleading that under the circumstances as the law was not clear, penalty, per se, is not imposable and this being a fit case for waiver under section 80 of the Finance Act, 1994. We find merit in their argument as this issue was agitated before various judicial forums and clarity emerged only after the Hon'ble Supreme Court decided the issue, vide the above cited judgment. It is also not in dispute that they started paying service tax once the clarity emerged regarding leviability of service tax and this is also obvious from the findings of the adjudicating authority, who appropriated the said amount towards tax liability confirmed. We also find that their request for adjusting of certain amounts paid under the PAN of their Director has already been examined and allowed by the adjudicating authority. Insofar as demand for the period 2011-12, they have already paid the amount and we find that the adjudicating authority has also confirmed the said amount and also appropriated the same. The adjudicating authority has also appropriated certain interest amount towards interest liability in terms of SCN No. 102 & 103/2013.

10. Further, we find that the adjudicating authority has already considered and allowed most of the relief sought by the appellants except for short paid amount of Rs.30,00,145/-, which has been disputed. However, we find this amount includes an amount of Rs.57,349/- on account of irregular credit, the same was not confirmed and hence denied by the adjudicating authority. It is obvious that no service tax can be levied on any amount reflected in

their books of account, which are relatable to various types of discounts. Similarly, they are required to pay service tax on any amount, which is relatable to activation charges and mobile repair charges. Any other income, which is not relatable to these activities cannot be covered either under the category of MMRS or BAS. Therefore, we find that the matter is required to be remanded back to the adjudicating authority for limited purpose of recalculating the tax liability keeping in view these observations and findings. The appellants can produce CA's Certificate that reflect the said amount on which service tax has been confirmed, does not relate to either Activation charges or mobile repair charges or other discounts.

11. We also find merit in their submission that the issue of activation charges was under dispute between the department and different appellants over a long period of time, which got finally settled by the Hon'ble Supreme Court. Thus, one cannot attribute any deliberate or malafide intent for non-payment of duty. Insofar as the issue of discounts is concerned, the adjudicating authority has already dropped the entire demand to the extent documents were furnished substantiating the claim and for remaining amount, it was not been allowed as documents were not accepted as valid evidence. Thus, as far as imposition of penalty under section 78 is concerned, we find that in the given factual matrix, as also considering the grounds adduced by the appellant for non-imposition of penalty, there was no deliberate evasion or intent to evade service tax on such income.

12. Insofar as their plea for non-invocation of extended period is concerned, we find that almost entire demand was relatable to two issues viz., non-payment of service tax on activation charges as well as non-payment of service tax on certain income received by them from the manufacturer. On adjudication, the issue relating to discounts is already settled in their favour holding that those incomes were relatable to sale of goods. Similarly, as far as activation charges are concerned, we have already held that non-payment of service tax was due to ongoing litigation, which got finally settled by the Hon'ble Supreme Court and that they have paid substantial service tax on their own without contesting it except to the extent of miscalculation and non-allowance of a part income claimed as discount but not allowed by adjudicating authority. Therefore, in the given factual matrix, we find that there is force in their submission and various

case laws cited by them and especially when there is no concrete and positive evidence available pointing out to their deliberate intent to evade payment of service tax. Thus, the extended period will not be invokable and demand, if any, will be restricted only to the normal period in the remand proceedings. Further, if on re-computation of demand on the lines of observations made, supra, penalty is also required to be imposed, in the facts of the case, penalty under section 78 will not be imposable.

13. To sum up,

a) The impugned order confirming the demand, except for the amount of Rs.30,18,384/- is upheld. The penalty under section 78 is set aside. Invocation of extended period is not found sustainable in the facts of the case. The impugned order is modified to that extent.
b) The disputed amount of Rs.30,18,384/- not treated as relatable to discount and hence confirmed as relatable to mobile repair charges is to be re-examined by the adjudicating authority subject to production of evidence by the appellant and discussion/observations in the foregoing paras.
c) Penalty under section 78 is set aside.

14. Appeal allowed partly.

(Pronounced in the Open Court on 30.01.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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