IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. ST/57/2008

Arising out of Order-in-Original No. 04/ST/Com/07 dated 19.12.2007 passed by the Commissioner of Central Excise & S. Tax, Patna.

Bharat Sanchar Nigam Ltd,

…Appellant (s)

Vs.

Commissioner of Central Excise & S. Tax, Patna.

…Respondent (s)

Appearance:
Shri A. K. Srivastava, Advocate & Shri Akash Sharma (PCS) for the Appellant (s)
Shri A. K. Biswas, Suptd. (AR) for the Respondent(s)

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL
HON'BLE SHRI C. L. MAHAR, MEMBER (TECHNICAL)

Date of Hearing/Decision: - 28.06.2018

ORDER No…FO/A/77120/2018

Per Bench.

The facts of the case in brief are that the Show Cause Notice dated 22.01.2007 was issued alleging contravention of the statutory provision and non-payment of service tax during the period of 2001-02 to 2005-06. The adjudicating authority confirmed the demand of Rs 1,63,03,729/- alongwith interest and imposed penalty under section 76 , 77 and 78 of the Finance Act , 1994. Hence, the present appeal before the Tribunal.

2. The Ld. Advocate appearing on behalf of the appellant submits that it is not always the case of short payment. BSNL is discharging its liability of Service Tax on a month-to-month basis adopting the case system of accounting. Accordingly in some month they have paid excess of Service Tax and in some month, there has been a short payment of service Tax, which on reconciliation, clarifies the entire dispute. He further submits that:-

(i) in the year 2002-03, the gross value received is Rs.8,62,35,847/- , non taxable value is Rs.8,45,327/-, net value comes to Rs.8,53,90,520/- Service Tax payable comes to Rs.42,69,526/-, Service Tax paid is Rs.23,12,748/- so there is short payment of Rs.19,56,778/-.

(ii) in year 2003-04, the gross value received is Rs.12,84,75,655/- , non taxable value is Rs.5,84,585/-, net value comes to Rs.127891070/- service tax payable comes to Rs.1,00,21,128/-, Service Tax paid is Rs.88,32,137/- , so there is short payment of Rs.11,90,936.88/-.

(iii) in year 2004-05 , the gross value received is Rs.13,36,94,287/- non taxable value is Rs.4,80,049/- net value comes to Rs.13,32,14,238/- service tax payable comes to Rs.1,25,54,518/-, service tax paid is Rs.1,06,24,043/-, so there is short payment of Rs.19,30,475/-.

(iv) in year 2005-06, the gross value received is Rs.11,53,61,196/-, non taxable value is Rs.37,021/-, net value comes to Rs.11,53,24,175/- service tax payable comes to Rs.1,17,62,456/- , service tax paid is Rs.1,41,11,709/- so there is excess payment of Rs.12,60,934/-.

3. Therefore, the appellant is entitled to pay Rs.38,17,256/- and the same has been paid.

4. That due to software problem, earlier non taxable value (Local PCO+VPT and cheque dishonour) could not be segregated. The appellant is providing the bifurcation of non taxable values on which no service tax is leviable. Service tax is not leviable on local PCO+VPT vide Notification no. 3/94 dated 30.06.94. That the appellant verified from its record and paid service tax of Rs.12,319/- on leased circuit provided to P.N.B. and LIC. The appellant sought time for verification but respondent did not give opportunity and confirmed the demand.

5. That the appellant prayed for time as they are trying to locate the wrong booking for providing telegraph services. Now the

appellant has paid service Tax of Rs.62,828/- on telegraph services, though no service tax was collected from the customers from 2001-02 to 2005-06. That the appellant is filing revised chart, year wise, to prove that only service tax of Rs.38,48,745/- remained due on the commission paid to PCO and not Rs 72,60,889/- as claimed by the respondents. Due to error, service tax was paid only on the realized amount and not on the commission paid to PCO. The appellant has paid the admitted service tax on 31.03.2008.

6. The learned D.R. reiterates the discussion and findings of the impugned order.

7. Heard both sides and perused the appeal records.

8. We find from the records that the appellants have filed calculation of service tax liability under different heads and have claimed that there has been an excess payment of Rs.5,52,696/-. On the facts and under the circumstances of the case it appears that the evidences of payment of service tax and the calculation charts have either not been placed before the Adjudicating Authority or has not been correctly appreciated to enable the correct appreciation of the factual position.

9. We set aside the impugned order and remand the matter to the original authority for consideration of the submissions and the evidences. The appellants are directed to co-operate in the Denovo proceedings by submitting the evidence and the calculation chart in support of their claim. The Original Authority shall decide the issue after granting reasonable opportunity of hearing. Since the matter is very old, the Adjudicating Authority is directed to pass the Denovo order as early as possible.

10. The appeal is allowed by way of remand.

(Operative portion of the order have already pronounced in the open court)

(C. L. Mahar)
Member (Technical)

(P. K. Choudhary)
Member (Technical)

Tushar Kr.