IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

S.Tax Appeal No.163 of 2009

(Arising out of Order-in-Appeal No.33/PAT/S.Tax/Appeal/2009 dated 26.03.2009 passed by Commissioner of Customs, Central Excise & S.Tax (Appeals), Patna)

M/s B.S.N.L.,
O/o – T.D.M.,
Begusarai

Applicant (s)

VERSUS

CCEx., Patna
Central Revenue Building,
2nd Floor,
Patna, Bihar

Respondent (s)

APPERANCE :

Shri A. K. Shahi, Advocate for the Appellant
Shri A. K. Singh, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR.V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75499/2019

DATE OF HEARING : 06.03.2019
DATE OF DECISION : 06.03.2019

PER P.K.CHOUDHARY :

The facts of the case in brief are that the appellant, M/s BSNL, Begusarai, is registered under the category of "Telephone Services". The period of dispute is from October, 2004 to September, 2005. The appellant had effected adjustment of service tax said to be paid in excess to the credit of Central Government against their service tax liability for the subsequent period. The Department was of the view that the appellant was not eligible to make such adjustment as per the provision of Rule 6 (4A) of the Service Tax Rules, 1994. Show-Cause notice was issued. The Adjudicating Authority confirmed the demand of service tax amounting to Rs.26,50,811/- and also ordered for appropriation of Rs.13,98,740/- being excess amount paid by the appellant during the period October, 2005 to March, 2006 and Rs.4,35,560/- paid by the appellant vide Challan dated 30th November, 2006 against the aforesaid demand. Penalties under Section 76,77 & 78 of the Finance Act, 1994, were also imposed. On appeal before the lower appellate authority, the ld. Commissioner (Appeals) upheld the adjudication order to the extent of adjustment of demand under Rule 6 (4A). On the issue related to taxability on collection from VPT (Village Telephone Booth), he set aside the adjudication order and remanded the matter to the adjudicating authority to decide afresh as per law.

2. Heard both sides and perused the appeal records.

3. We observe that the issue is no more *res-integra* in view of the various decisions of the Tribunal. In the case of Jubilant Organosys Ltd. reported in 2015 (38) STR 1230 (Tri.-Delhi), the adjustment of service tax was allowed in terms of Rules 6 (4A) of the Service Tax Rules, 1994 in similar circumstances. The Tribunal in that case, has observed as under :

> *"The appellants have contended that the issue whether the adjustment of service tax paid in excess during certain months can be adjusted towards service tax liability of the subsequent months has been subject matter of various judicial pronouncements settling the issue in their favour."*

5. We have considered the facts of this case and the relevant judicial pronouncements on subject matter cited above. All these judicial pronouncements have in effect held that the adjustment of service tax paid in excess in certain months towards the service tax liability of the subsequent months cannot be denied on such technical grounds. Indeed, in a very recent CESTAT judgement (Order No.52863/2014 dated 10.07.2014) in the case of B.S.N.L., the issue has been considered and decided in favour of the assessee. Thus, the issue stands settled in favour of the appellants and is no longer *res-integra.*

6. In view of the decision cited (supra), we set aside the impugned order to the extent of allowability of adjustment as per the provision of Rule 6 (4A) of the Service Tax Rules, 1994.

7. The appeal filed by the appellant is allowed.

(Operative portion of the order was pronounced
in the open court)

Sd/
(P. K. Choudhary)
Member (Judicial)

Sd/
(V.Padmanabhan)
Member (Technical)

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