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

REGIONAL BENCH – COURT NO.1

S. Tax Appeal No. 248 of 2009

Arising out of Order-in-Original No.18/ST/Com/2009 dated 12/06/2009 passed by the Commissioner of Customs, Central Excise & S. Tax, Patna

M/s. BSNL
CTO Building, Budh Marg,
Patna **Appellant (s)**

VERSUS

Commr. of Central Excise, Patna
Central Revenue Building, Bir Chand Patel Path
Patna-800001

Respondent (s)

APPERANCE :

Shri A. K. Sahi, Advocate for the Appellant
Shri D. Haldar, A. R. for the Respondent

CORAM:
HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

ORDER NO.FO/76890/2019

Date of Hearing : 23 October 2019
Date of Decision : 23 October 2019

PER P. K. CHOUDHARY :

The appellant is in appeal against the impugned Order. The period of dispute is from April 2003 to March 2007.

2. The Ld. Advocate appearing on behalf of the appellant submits that in the year 2006-07, the appellant had paid Rs.3,75,74,866/- in excess against the tax liability for the year 2006-07. The contention is that excess payment was made in respect of the short payment for previous period. If that amount is taken into consideration, the appellant had no further liability to pay Service Tax. In respect of the demand of interest, the contention is that the applicant had paid the due amounts to D.O.T and subsequently the amounts were transferred to the Revenue hence, the demand is not sustainable.

3. Ld. DR appearing on behalf of the Revenue submits that the appellant collected amount of Service Tax from their customers and for the year 2003-04 there was a short payment of more than Rs.65.00 Lakhs, for the year 2004-05, short payment is more than Rs.1.00 crore and for the year 2005-06, there was a short payment of more than Rs.3.00 crores.

There is no demand for the year 2006-07. The Ld. DR submitted that in reply to the show Cause Notice dt. 10/12/2008, the appellant admitted the short payment of Service Tax.

4. Ld. DR submits that the adjustment in respect of excess payment of Service Tax can be for the subsequent period and not for the previous period as per the sub-rule 4(A) of Rule 6 of Service Tax Rules; hence, the demand is rightly made.

5. Heard both sides and perused the appeal records.

6. I find that there is no dispute regarding the fact that the appellant collected the amount of Service Tax and short paid during the period 2003-04 to 2005-06. It is the contention of the appellant that excess amount paid subsequently in the year 2006-07 is to be adjusted against the short payment for the previous period has no merit as the sub rule 4 (A) of Rule 6 of Service Tax Rules provides as under:-

"Notwithstanding anything contained in sub-rule (4), where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be."

7. In view of the above discussions, the penalties are set aside and the matter is being remanded for the limited purpose of re-computation of the tax liability taking into consideration the amount paid in excess in some months and the shortfall in other months. Wherever, cum-tax benefit is to given, should be given after due verification of the related documents. Accordingly, the appeal filed by the appellant is disposed of in the above terms.

(Operative part of the order was pronounced in the open Court.)

Sd/-

(P. K. Choudhary)
Member (Judicial)

Sd/-
(Bijay Kumar)
Member (Technical)

Pooja