THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Civil Miscellaneous Appeal No.2994 of 2005

Commissioner of Central excise, Chennai-I,
121, Uthamar Gandhi Road, Nungambakkam,
Chennai-34. .. Appellant

-vs-

M/s.Chennai Telephones, BSNL,
6th Floor, Anna Road, Tele-Exch.,
10 Dams Road, Chennai-600 002. .. Respondent

APPEAL under Section 35G of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, to set aside the order dated 15.10.2003, made in Final Order No.945 of 2003 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Southern Regional Bench, Chennai and preferred against this appeal order dated 28/02/2002 made in order in Appeal No.9/2002(M-1) on th efile of the Commissioner of Central Excise (Appeals)Chennai-34 and preferred against this appeal order dt.17/09/2001 made in C.NO.IV/16/305/99 STC on the file of the Commissioner of Central Excise, Chennai-1.

For Appellant : Mrs.Hema Muralikrishnan,
Senior Panel Counsel

For Respondent : Mr.T.Ravikumar,
Senior Standing Counsel

******

JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This appeal has been filed by the appellant/Revenue challenging the order dated 15.10.2003, in Final Order No.945 of 2003 passed by the Customs, Excise and Service Tax Appellate

Tribunal, Southern Regional Bench, Chennai (for brevity "the Tribunal").

2.The above appeal has been admitted, on 26.09.2005, on the following substantial question of law:-

> "Whether Tribunal is right in ruling that interest need not be paid by M/s.Chennai Telephones for the delay in payment of Service Tax (Crediting to the Government Account - 0044) because they were a central Government Organization during the material time when there is a Board's Circular No.5/5/94 dated 11.10.94 requiring the 1st respondent to pay the service tax by way of crediting the collected service tax amount to the Government Account - 0044 in time and when the Section 75 of the Finance Act, 1994 proves for collection of interest on such delayed payments of Service Tax."

3.Heard Mrs.Hema Muralikrishnan, learned Senior Panel Counsel for the appellant/Revenue; and Mr.T.Ravikumar, learned Senior Standing Counsel for the respondent/Chennai Telephones.

4.We have carefully examined the order passed by the Tribunal and the grounds raised by the Revenue before us. The question is whether the respondent is liable to pay interest for the delayed payment of service tax. The Tribunal in paragraph 5 of the impugned order has noted hereunder:-

> "5.We have considered the submissions made by both sides and find that during the period i.e. from 5.10.94 to 14.10.98 when the journal slips were issued it was a Department of Telecommunication Services which was a Central Government Department and in view of the Tribunal decision rendered in the case of G.M.TELECOM BSNL vs. CCE, Chandigarh reported in 2003 (57) RLT 748 (Cegat Del) no interest is chargeable on the telephone services for delay in crediting the service tax in Government A/c. 00044 during the period prior to March, 1999 and no interest required to be paid by the appellants as they were at the material time Central Government Department and the service tax have been deposited on day to day basis and was deposited into the consolidated fund of India. In view of the above facts and circumstances, by applying the ratio of the decision of the Tribunal rendered in the case of G.M.Telecom BSNL vs. CCE, Chandigarh (supra), we set aside the impugned order and allow the appeal. Ordered accordingly."

5.The Revenue is on appeal before us contending that the Tribunal erred in observing that the respondent-BSNL, during the relevant time, was paying the collections on day-to-day basis in the Consolidated Funds of India and hence, it can be taken as payment of service tax in time. The appellant would rely upon various dates on which, remittances have been made and points out that there is always a delay of one month, for which, simple interest at the rate of 1.5% per month is payable.

6.In our considered view, the Tribunal on examining the factual position found that when the journal slips were issued for the period from 05.10.1994 to 14.10.1998, the same were issued to the Department of Telecommunication Services, which is a Central Government Department. The Tribunal referred to an earlier decision of the Delhi Tribunal in the case of G.M.TELECOM BSNL vs. CCE, Chandigarh reported in 2003 (57) RLT 748 (Cegat Del). The Revenue has not been able to point out before us as to how the said decision cannot be applied to the case on hand.

7.Thus, for the above reasons, we find that there is no substantial question of law arising for consideration in the facts and circumstances of the case, as the entire matter revolves around the factual controversy, which has been dealt with by the Tribunal.

8.For the above reasons, we dismiss this civil miscellaneous appeal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

abr

To

1.The Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench, Shastri Bhawan Annexe,
1st Floor, 26 Haddows Road, Chennai-600 006.

2.The Commissioner of Central Excise(Appeals),
Chennai-34.

3.The Commissioner of Central Excise,
Chennai-1.

+1cc to Mrs.Hema Muralikrishnan, Advocate sr.16353
+1cc to Mr.T.Ravikumar, Senior Standing Counsel sr.16503

C.M.A.No.2994 of 2005

nr 29/04/2019