

Customs, Excise and Gold Tribunal - Bangalore

Bellary Computers vs Commissioner Of C. Ex. (Appeals) on 7 August, 2007

Equivalent citations: 2007 8 S T R 470, 2008 12 STT 261

Bench: S Peeran, J T T.K.

ORDER T.K. Jayaraman, Member (T)

1. This appeal has been filed against Order-in-Appeal No. 131/2005-C.E. dated 6-5-2005 passed by the Commissioner of Central Excise (Appeals), Mangalore.

2. The appellant is providing certain services to M/s. Gulbarga Electricity Supply Co. Ltd., Bellary (GESCOM). The total value of service rendered by the appellant for the period from July, 2003 to February, 2004 was Rs. 10,37,866/-. Revenue proceeded against the appellants on the ground that the services rendered by the appellant to M/s. Gulbarga Electricity Supply Co. Ltd. amounts to 'Business Auxiliary Service' and they are liable to pay Service Tax in terms of the Finance Act, 1994. The Adjudicating Authority confirmed the demand of Rs. 83,029/- along with interest and imposed penalties of Rs. 21,900/- under Section 76 and Rs. 500/- under Section 77 of Finance Act, 1994. The appellants were aggrieved by the order of the Adjudicating Authority and hence, they approached the Commissioner (A). The Commissioner (A) after examining the issue rejected the appeal of the appellants. Hence, the appellants have come before this Tribunal for relief.

3. Shri M. G. Varadarajan, learned Advocate appeared for the appellants and Shri K. Sambhi Reddy, learned JDR for the Revenue.

4. We heard both the sides. After examining the contract entered into between the appellant and M/s. Gulbarga Electricity Supply Co. Ltd., we find that the entire service relates to "Computerized Billing and Revenue Management" system of about 17,000 installation/consumers of the M/s. Gulbarga Electricity Supply Co. Ltd. in Bellary. In terms of the agreement entered between the appellants and GESCOM, it is seen that the appellants have to provide software as well as hardware to discount for implementation of the revenue management system. The appellants have contended that the services rendered by them would not come within the purview of 'Business Auxiliary Service'. The statutory definition of 'Business Auxiliary Service' as provided in Section 65(19) of Chapter V of Finance Act, 1994 is given below:

"Business Auxiliary Services" means any service in relation to:

- (i) promotion or marketing of sale of goods produced or provided by or belonging to the client; or
- (ii) promotion or marketing of service provided by the client; or
- (iii) any customer care service provided on behalf of the client; or
- (iv) any incidental or auxiliary support service such as billing, collection or recovery of cheques, accounts and remittance, evaluation of prospective customer and public relation services.

And includes services as a commission agent, but does not include any information technology service.

Explanation - For removal of doubts, it is hereby declared that for the purposes of this clause "Information Technology Service" means any service in relation to designing, developing or maintenance of computer software, or computerized software, or computerized data processing or system networking or any other service primarily in relation to operation of computer system.

4.1 When we examine this appeal, we find that the appellants are not actually promoting the business of GESCOM. The only service, which they render and which will come under the taxable net, would be billing. That may come under the 'Business Auxiliary Services'. All other services, which they render, in our view relate to 'Information Technology Service', which is excluded from the scope 'Business Auxiliary Services'. A large number of computers are supplied to GESCOM by the appellants and for the supply of these computers, printers and other hardware items, the appellants are receiving hiring charges. Moreover, they are also required to generate MIS reports and do a lot of data processing and generate very many reports. These things would squarely fall under the purview of 'Information Technology Services', which would not be taxable presently. In these circumstances, we hold that only the billing activity rendered by the appellants would come within the purview of 'Business Auxiliary Services'. Therefore, we have no other option but to remand the case to the Original Authority for re-computation of the Service Tax liability by excluding the amount charged for hiring of the hardware and also the amount charged in connection with the Information Technology Services. There is a request from the appellants that they had not collected any Service Tax from their customer i.e. GESCOM. Therefore, they requested to give them the cum-duty benefit. In other words, there is a request from the appellant that while calculating the duty liability, gross amount collected for services should be treated as including the Service Tax. In any case, we are remanding the matter to the Original Authority. The Original Authority may examine this aspect also in accordance with law and decide the issue within four months from the date of this order. Thus, the matter is remanded for re-computation of the tax liability. Further, we do not find any reason for invocation of the longer period. Therefore, whatever demand is made should be confined to the normal period.

(Operative portion of this Order was pronounced in open court on conclusion of hearing)