

Central Excise Act, 1944 S.35L(b) - Composite contract - The sum and substance of the ratio of the case of *BSNL* as discernible is that the contract cannot be vivisected or split into two- Once a lumpsum has been charged for the sale of CD (as in the case on hand) and sale tax has been paid thereon, the revenue thereafter cannot levy service tax on the entire sale consideration once again on the ground that the updates are being provided - We are of the view that the artificial segregation of the transaction, as in the case on hand, into two parts is not tenable in law - It is, in substance, one transaction of sale of software and once it is accepted that the software put in the CD is "goods", then there cannot be any separate service element in the transaction - We are saying so because even otherwise the user is put in possession and full control of the software - It amounts to "deemed sale" which would not attract service tax - Customs Act S.2(22), S.2(22)(e) - Constitution of India, 1950 Art.366(12), Art.366(29A), Art.366(29A)(d). [Para 54]

Facts:

The assessee engaged in the development of Quick Heal brand Antivirus Software had not been paying service tax prior to 01.07.2012 on the services covered under the category of "Information Technology Software Service" falling under Item No. (vi) of clause (zzzze) of sub-section (105) of Section 65 of the Act 1994 w.e.f 01.07.2012 on the services covered under the category of "Information Technology Software Service" under Section 66E(d) of the Act 1994 for providing Quick Heal brand Antivirus Software license key/code supplied along with the CD/DVD replicated with the Quick Heal brand Antivirus Software through the dealers/distributors to the end-customers in India.

An inquiry was initiated against the assessee and at the end of the same, the revenue reached to the conclusion that the assessee is liable to pay service tax on the transactions with the end-customers to supply the license codes/keys of Quick Heal brand Antivirus Software in the retail packs. The revenue reached to the conclusion that the assessee had failed to pay the service tax on the consideration received for the supply of the license codes/keys of Antivirus Software to the end-customers in retail packs during the period between 01.03.2011 and 31.03.2014.

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