IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/2970/2012-CU[DB]

(Arising out of Order-in-Appeal No.196-ST/APPL/KNP/2012 dated 26/06/2012 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Kanpur)

M/s Bharat Sanchar Nigam Ltd. **Appellant**

Vs.

Commissioner of Central Excise &

Service Tax, Kanpur **Respondent**

Appearance:

Absent on Call for Appellant
Shri Pawan Kumar Singh (Supdt.) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing	:	21/06/2018
Date of Decision	:	21/06/2018

FINAL ORDER NO. – 71226/2018

Per: Archana Wadhwa

Nobody appeared for the appellant. Accordingly, we have heard the learned A.R. and gone through the impugned order. To appreciate the issue involved as also the reasons for denial of the credit, we reproduce relevant paragraph of the impugned order of Commissioner (Appeals):-

"On the issue of admissibility of credit, it is observed that as per the provisions of Rule 9(1) of Cenvat Credit Rules, 2004, certain documents have been specified on the basis of which credit can be taken. The documents issued by the Circle Officer, Lucknow on the basis of which appellant has taken credit have not been specified in the rule cited supra. I am of the view that when a particular thing is prescribed to be performed in a particular manner, it should be performed in the same manner and not otherwise as deviation from the same will defeat the very purpose of framing a legislation. In the instant case, credit has been taken without proving the duty paid character of the inputs which could have been easily done by producing the duty paying documents which has not been done by the appellant either at the adjudicating stage or at the appellate stage before me. Under the circumstances when duty paid character of the capital goods have not been proved to the satisfaction of proper officer, credit cannot be allowed. The plea of technical lapse and reliance on the catena of decision cited supra by the appellant are not sustainable in view of the fact discussed above. The reliance placed by the appellant on CESTAT order in the case of BSNL Ltd. Vs. CCE, Salem [2009 (14) STR-699 (Tr.-Chennai)] is not

acceptable as the order has not attained finality due to the reason that the order has been appealed against by the department in the High Court, Chennai which indicates that the order has not attained finality and cannot be relied as per the law of judicial discipline. Accordingly, I hold that credit has rightly been denied by the adjudicating authority.

On the issue of application of extended period, I am of the opinion that extended period is invokable in the impugned case, as they are working under self-assessment system and are well aware of the provisions; under obligation to follow the procedure; availing credit on the strength of inadmissible documents; taking shelter of procedural lapse without proving the duty paid character of the capital goods which could have been done by producing the invoices issue by the seller of the capital goods and the act of utilizing the credit availed irregularly in discharging service tax liability are sufficient to establish suppression with intention to evade payment of tax. Accordingly, I hold that extended period is invokable in the impugned case."

2. As seen from the above Commissioner (Appeals) has himself admitted that the issue stands covered by the

earlier decision of the Tribunal in the same assessee's case. However, Appellate Authority has not followed the same on the ground that Revenue has filed an appeal before the Hon'ble High Court of Chennai. Learned A.R. has not been able to show any decision of the Hon'ble High Court indicating that the said decision of the Tribunal stands reversed. Even there was no stay granted by the High Court. In such a scenario, the law declared by the Tribunal was required to be followed by Commissioner (Appeals).

3. As regards invocation of extended period, we note that the appellant is wholly owned corporation of Government of India and cannot be attributed with any *mala fide* so as to justifiably invoke the longer period of limitation. Accordingly, we hold the demand to be barred by limitation also.

4. In view of the above reasons, we set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Dictated & Pronounced in Court)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Lks