FAX : 0532-2400149

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 23/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70874-70875/2016-SM[BR] dated 08/03/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the **Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/54998-54999/2014	BHARAT SANCHAR NIGAM LIMITED GMTD, MEERUT, GPO COMPOUND MEERUT CANTT MEERUT,UTTAR PRADESH 250001
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-i EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT,UTTAR PRADESH-250005

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s):

Rishi & Associates
60 - VILVESHWARPURI,
BEHIND SADAR THANA,
MEERUT CANTT,
UTTAR PRADESH

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

27/10/16

ISSUED ON

SIGNATURE ... CUSTOMS, EXCISE ... TAX APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD 211001.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

S.T.Appeal Nos.54998 & 54999/14- ST[SM]

Arising out of OIA No.05-ST/APPL/MRT-I/2014 dated 19/02/2014 passed by the Commissioner (Appeals), Central Excise, Meerut-I.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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M/s Bharat Sanchar Nigam Ltd.

.....APPELLANT(S)

VERSUS

Commissioner of C.Ex. & S. Tax, Meerut-I

.....RESPONDENT (S)

APPEARANCE

Shri R.K. Rishi, Adv. for the Appellant (s)
Shri S.V. Nair, Asstt.Commr. (A.R.) for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 08.03.2016

Final ORDER NO. 70874-70875/2016

Per Mr. Anil Choudhary :

The Appellant, M/s B. S. N. L., is in Appeal against Order-in-Appeal No. 05-ST/APPL/MRT-I/2014 dated 19/02/2014 passed by the

Commissioner (Appeals), Central Excise, Meerut I by which the appeal was rejected confirming the Order-in-Original whereby, the demand of service tax with interest was confirmed and penalty was imposed under Section 76 of the Finance Act, 1994 and another penalty was also imposed under Rule 15 (4) of the Cenvat Credit Rules, 2004 read with Section 78 of the Finance Act, 1994.

2. The brief fact is that the appellant, M/s B.S.N.L., had taken Cenvat Credit on the basis of "Advice of Transfer Debit" issued by the Central Telephone Store Department of the appellant, supported by Xerox copies of the original invoices.

3. Heard the parties. I find that the issue is no more res-integra. Under the similar facts and circumstances of the case, the issue has been decided by the Single Member Bench of this Tribunal in the case of M/s B. S. N. L. Vs. CCE : 2014 (34) STR 378 (Tri.-Chennai), wherein it was held as under :

> "6. Considered submissions on both sides. It is true that assessee has not complied with provisions of CCR, 2004 read with Central Excise Rules, 2002 strictly. However, I find that existence of original invoice and its genuineness is not disputed by Revenue. In fact, such documents were produced before lower authorities. Therefore, the duty involved has been paid and there is no dispute that the equipment in question has been used at the sites where credits were taken. In such circumstances, considering the commercial practice which was necessary for efficient procuring the equipment in question, this procedural lapse cannot be considered as a reason to deny Cenvat credit involved. Therefore, following the precedent decisions of the

Tribunal I allow Cenvat credit and consequently there is no question of imposing any penalty. Therefore the appeal filed by the assessee is allowed and the appeals filed by Revenue are rejected. All the appeals are disposed of accordingly. "

4. The said decision was also followed in another Single Member Bench of this Tribunal being Final Order No.52128-52131/2014 dated 09.05.2014.

5. At this stage, the ld. A.R. for Revenue, points out that the issue relates to taking of Cenvat credit of Rs.21,93,606/- and the appellants before the authorities below, have shown the documentary evidences only in part and thus there remained some discrepancy to be explained.

6. From the above, it is clear that the re-conciliation is not done before the Court below. Accordingly, I allow the appeal by way of remand setting aside the penalties, and direct the adjudicating authority to pass a fresh order by following the decision of this Tribunal in the case of M/s B. S. N. L. Vs. CCE : 2014 (34) STR 378 (Tri.-Chennai) (cited supra). I further direct the appellant to appear before the adjudicating authority within a period of 60 days from the date of receipt of a copy of this order along with supporting in their favour and seek opportunity of hearing.

7. Thus, the appeal is allowed by way of remand.

(Dictated and pronounced in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

सत्यापित प्रति / Certified True Copy

25.10.16

35, M. G. MARG, ALLAHABAD-211001