CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 14/12/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70086/2015 dated 03/12/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar/ES

Application	Appeal	Name and Address of Appellant
	ST/55003/2014	B.S.N.L. TELEPHONE EXCHANGE SECTOR-19, NOIDA UP-201301
	Name and Address of Respondent	CCE ,NOIDA C-56/42, S ECTOR-62 NOIDA(UP).

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): SH A.K.SHARMA,ADV
26, GODAWARI SHOPPING
CENTRE, SECTOR-37
NOIDA(UP)

4 Bar Association, CESTAT, Delhi
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 C.D.R. 15 Office Copy 16 Guard File

14/12
Asstt. Registrar/SFC
Regional Bench, Allahabad

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

S.T. Appeal No.55003/14

Arising out of OIA No.NOI/EXCUS/000/APPL/48/2014 dated 26/02/2014 passed by the Commissioner (Appeals-I), Central Excise, Customs & S.Tax, Noida.

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 B. S N. L. ...APPELLANT(S)

VERSUS

Commissioner of C.Ex. & S. Tax, Noida RESPONDENT (S)

APPEARANCE

Shri Sudarshan Singh & Shri Nishant Mishra, both Advs. for the Appellant (s)
Ms.Kanu Verma Kumar, Commissiner (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 03. 12. 2015

Final. ORDER NO. 70086/2015

Per Mr. Anil Choudhary :

The Appellant, M/s B. S. N. L., is in Appeal against Order-in-Appeal No. NOI/EXCUS/000/APPL/48/2014 dated 26/02/2014 passed by the Commissioner (Appeals), Central Excise, Customs & S.Tax, Noida.

2. The issue involved in this appeal, is whether the imposition of penalty equivalent to service tax under Section 78 of the Finance Act, 1994, is proper or not.

3. The brief facts of the case are that during course of Audit, it was observed that the appellant have not paid service tax amounting to Rs.1,08,655/- during the period 3/3/09 to 19/5/09 on account of taxable service provided to the customers located in SEZ, Noida. Under notification Number 9/2009 – ST dated 3/3/2009, appellant had realised Rs. 7,68,682/- against such services provided to the customers. It was pointed by the audit that the appellant was required to pay service tax of Rs.79,174/- involved in respect of the realization of Rs.7,68,682/-. Further, it was noticed by the Audit that the Appellant is also providing exempted services simultaneously under "Village Panchayat Yojna" but were not maintaining separate records/books for taxable & exempted services. Therefore, it appeared to Revenue that the appellants were required to pay an amount equal to 5% or 6% of the value of exempted services under Rule 6 (3)(i) of Cenvat Credit Rules, 2004. On such, realization for exempt service was of Rs.4,39,721/- and attracts service tax of

Rs.29,481/-. It was further mentioned in the show-cause notice dated 29.08.2013 that the appellants have paid a total amount of Rs.1,08,655/- (Rs. Rs.79,174/- + Rs.29,481/-) vide e-receipt Sl.No.50124 dated 11.04.2011, but failed to pay interest thereof. Accordingly, the appellants were required to show-cause as to why the said amount of Rs.1,08,655/- be not demanded and recovered and further, be appropriated since the whole service tax has been paid and why the interest of Rs.30,166/- be not demanded. Further, penalty was proposed under Section 77 & 78 of the Finance Act, 1994. It appeared that the appellants did not file any reply to the show-cause notice and vide OIO dated 29.08.2013, show-cause notice was confirmed along with demand of interest and observed that the appellant deposited the whole amount of service tax prior to issuance of show-cause notice and penalty of Rs.1,08,675/- was imposed under Sections 77 & 78 of the Finance Act, 1994 on account of failure to pay service tax in time, suppression of material facts from the department by not reporting in the Service Tax-3 Returns.

4. Being aggrieved, the appellant preferred an appeal before the ld.Commissioner (Appeals) on the ground that no show-cause notice was required to be issued under Section 73 under the fact that the appellant had already deposited the entire service tax objected by the Audit and as the transactions were properly recorded in the books of account, ordinarily maintained, no case of suppression of facts with intent to evade service tax is made out. In the impugned order, the ld.Commissioner (Appeals) observed that the demand of service tax

have been confirmed on the value of exempted services provided under "Village Panchayat Yojna" and appropriated but there was emergence failure on the part of the appellants, as the same was paid upon the objection of Audit along with interest. It has been further observed that the appellants have deposited the amount of tax out of their own pocket well before the issuance of show-cause notice. As such, no action was required to be taken under Section 73 of the Act and the impugned order should be set aside as there is no contumacious conduct or no action with intent to evade tax. As such, levy of penalty is bad in law and on merit also. However, the ld.Commissioner (Appeals) rejected the appeal and upheld the order-in-original.

5. Being aggrieved, the appellant is in appeal before this Tribunal on the ground urged before the Commissioner (Appeals).

6. Heard both sides.

7. Having considered the rival contentions, I find that the appellant have deposited the tax on being pointed out by the revenue much before the issue of show cause notice. Further, I find that the transaction was properly recorded in the books of account regularly maintained by the assessee/appellant. I find that the issue was interpretational of notification and exempt on provisions and no active concealment or contumacious conduct having been found on the part of the appellant. Thus, I allow the appeal and set aside the penalty imposed under section 77 and 78 of the Act. I also hold that imposition

of joint penalty is bad and the appeal is allowed on this score also. The appellant is entitled to get consequential benefit, if any, in accordance with law.

(Dictated and pronounced in the open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

प्रमाणित प्रति / Certified True Copy

सहायक पंजीकार / Asstt. Registrar /SPS
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001