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

Dated: 12/01/2018

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. ST/A/70144/2018-CU[DB] dated 02/01/2018

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/764/2012	**Bharat Sanchar Nigam Limited** Account Officer(cash), Mahanagar Telephone Exchange, Mahanagar, Lucknow.
		Name and Address of Respondent
2		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

Copy To
3Advocate(s) / Consultant(s):

Vineet Kumar Singh,Advocate
5 Narain Nagar, Sector 11,
Indira Nagar,
Lucknow,
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, Opp ICICI Bank of Defence Colony 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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad:-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/764/2012-CU[DB]

(Arising out of Order-in-Appeal No. 184-185/ST/LKO/2012 dated 26/03/2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow)

M/s Bharat Sanchar Nigam Limited — **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Lucknow — **Respondent**

Appearance:

Absent on Call, — for Appellant
Shri Pawan Kumar Singh, Superintendent (AR), — for Respondent

CORAM:

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

Date of Hearing : 02/01/2018
Date of Pronouncement : 04/01/2018

FINAL ORDER NO. 70144/2018

Per: Archana Wadhwa

On matter being called, nobody appeared on behalf of the appellant neither is there any adjournment request. Accordingly, we have heard learned A. R. appearing for the Revenue and have gone through the impugned order.

2. As per the facts on record, the appellant is registered for single premises to provide services under the category of 'Telephone Services'. They are availing the facility of Cenvat credit under Rule 2 of Cenvat Credit Rules, 2004 for payment of Service Tax. During the course of scrutiny of records of the appellants for the year 2005-06 to 2008-09 by the

Department, it was found that they have taken 100% credit i.e. Rs.32,90,12,240/- of the capital goods instead of 50% i.e. Rs.16,45,06,210/- of credit admissible in a financial year in which capital goods were received, as per Rule 4 (2) of Cenvat Credit Rules, 2004. The appellant was served the Show Cause Notice dated 04/10/2010 alleging therein that they have availed the excess credit Rs.16,45,06,210/- in a financial year which is in contravention of Rule 4 (2) of Cenvat Credit Rules, 2004, thus it was proposed to recover the interest of Rs.2,14,35,370/- on the amount of such excess credit under Rule 14 of Cenvat Credit Rules, 2004. It was also proposed to impose penalties under Rule 15 of Cenvat Credit Rules, 2004 read with Section 76 & 78 of Finance Act, 1994 and Sectio77 of the Act. After providing an opportunity of personal hearing, the Adjudicating Authority confirmed the demand of interest Rs.2.14 crores under Rule 14 of Cenvat Credit Rules, 2004 and imposed a penalty of Rs.5,000/- under Rule 15A of Cenvat Credit Rules, 2004 vide his OIO dated 31/05/2011.

3. Being aggrieved with the said order, appellant filed an appeal before Commissioner (Appeals), who rejected the same by following the Hon'ble Supreme Court's decision in the case of Union of India *Versus* Ind Swift Laboratories reported at 2011 (265) E.L.T. 3(S.C.). He did not find favour with the appellants contention that though they have availed excess

Cenvat credit but the same remained unutilized in their credit account only and as such, no interest liability would arise.

4. The issue required to be decided in the present appeal is, as to whether the interest liability would arise in the case of unutilized credit. We find that the Supreme Court's decision in the case of Union of India *Versus* Ind Swift Laboratories (supra) stands taken note of by the Hon'ble Karnataka High Court in the case of Commissioner *Versus* Bill Forge Pvt. Ltd. reported at 2012 (278) E.L.T. 209 (Karnataka), holding that in the case of unutilized excess Cenvat credit, no interest liability would arise. In as much as, in the present case, the excess credit availed by the appellant remained unutilized during the relevant period, we find no reasons to confirm the interest liability or to impose any penalty upon them. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief to the appellant.

(Pronounced in Court on 4/1/18)

Sd/-
Anil.G. Shakkarwar
Member(Technical)

Sd/-
(Archana Wadhawa)
Member (Judicial)

प्रमाणित प्रति/Certified True Copy

12/02/18

Ansari