CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 3165 of 2012

(Arising out of Order-in-Original No. 100/2012 dated 30.07.2012 passed by the Commissioner of Service Tax, Bangalore.)

M/s. Bharat Sanchar Nigam Limited,
Mobile Services, 4th Floor,
Annex Building, Karnataka Telecom Circle,
No. 1 S.V. Road, Halasur,
Bangalore – 560 008.

Appellant(s)

VERSUS

The Commissioner of Service Tax,
5th Floor, #16/1, S.P. Complex,
Lalbagh Road,
Bangalore – 560 027.

Respondent(s)

APPEARANCE:

Mr. Anil Kumar, Advocate for the Appellant

Mr. M. A. Jithendra, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21988 /2025

DATE OF HEARING: 10.09.2025
DATE OF DECISION: 10.09.2025

DR. D.M. MISRA

This is an appeal filed against Order-in-Original No.100/2012 dated 30.07.2012 passed by the Commissioner of Service Tax, Bangalore.

2. Briefly stated the facts of the case are that the appellant are providing taxable services under the category of Telecommunication Service and registered with the Department accordingly. On audit of their records for the period October

2008 to March 2010, it was noticed by the Audit Team that there was a short-payment of service tax to the tune Rs.63,14,815/- due to rounding off of pre-paid items. Consequently, show-cause notice was issued on 30.08.2011 for recovery of the service tax amounting to Rs.63,14,815/- short-paid during the period October 2008 to March 2010 with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Hence, the present appeal.

3. At the outset, the learned advocate for the appellant has submitted that the differential duty demand has been confirmed as the Department has not accepted the rounding off of the tax amount to the nearest rupee in terms of Section 37D of the Central Excise Act, 1944 as applicable to Service Tax matters by virtue of Section 83 of the Finance Act, 1994. He has submitted that the Board vide Circular dated 17.10.1995 has clarified that duty amount in each invoice should be rounded off to the nearest rupee. Also in the CBEC Excise Manual of Supplementary Instructions, 2005 at paragraph 9 of Chapter 4, it has been clarified that the amount of duty shown in the invoices issued under Rule 11 of the Central Excise Rules, 2002 should be rounded off to the nearest rupee as per Section 37D of the Central Excise Act, 1944. Further, he has submitted that their's is a public sector undertaking organisation and they have declared the gross receipts in their ST-3 returns filed during the period in dispute and the entire proceeding is based on the details declared by the appellant in the ST-3 returns. Therefore, invocation of larger period of limitation and penal provion are not sustainable.

4. Learned AR for the Revenue has reiterated the findings of the learned Commissioner.

5. Heard both sides and perused the records.

6. The short question invovled in the present appeal for consideration is whether applying Section 37D of the Central Excise Act, 1944 as applicable to Service Tax matters rounding off is permissible to pre-paid items sold by the appellant during the relevant period from October 2008 to March 2010.

> Section 37D of the Central Excise Act, 1944 reads as follows:-
>
> **Section 37D. Rounding off of duty, etc**.—The amount of duty, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.

7. A plain reading of the said provision, it is clear that amount of duty, interest, penalty, fine or any other sum payable and the amount of refund or any other sum due to the assessee under the provisions of the Act shall be rounded to the nearest rupee where such amount contains a part of rupee consisting of paise then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise, it shall be ignored. The said provision does not authorise to rounding off of the duty payable on the amounts shown in the pre-paid items to the nearest rupee of duty payable on such items. Therefore, the demand confirmed by the learned Commissioner observing that Section 37D not applicable to the present case is sustainable.

8. The Board's circular No.154/65/95-CX dated 17.10.1995 referred to by the appellant reads as follows:-

> Circular No. 154/65/95-CX, dated 17-10-1995
> [From F.No. 267/94/95-CX.8]
> Government of India
> Ministry of Finance (Department of Revenue)
> New Delhi
>
> Subject:- Rounding off of Central Excise Duty in the Invoices under Rule 52A / 57GG / 57T
>
> I am directed to say that instances have come to the notice of the Board wherein some unscrupulous assessees availed Modvat credit fraudulently by tampering the duty amount shown

> in the input Gate Passes / Invoices in their RG 23A Part-II Register. The duty amounts were found to be inflated by adding additional zeros. This point also came up in the oral evidence before the Public Accounts Committee in the case of *M/s. Sipani Automobiles Limited, Bangalore*.
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> 2. The Board has examined the matter in the above context and with a view to preventing such type of frauds in future, has decided that amount of duty being shown in 52A/ 57GG / 57T invoices should be rounded off to the nearest rupee as provided for under Section 37D of Central Excises & Salt Act, 1944. It is also desired that the duty amount so rounded off should be indicated both in words as well as in figures.

9. Reading of the said circular reveals that to prevent availing excess Modvat credit by tampering the duty amount shown in the input Gate Passes / Invoices, it is clarified that the amount shown in the Gate Passes / Invoices be rounded off to the nearest rupee in availing credit following Section 37D of the Central Excise Act, 1944. It does not, in any manner, state that the assessee is allowed to round off of the duty payable on each pre-paid items to the nearest rupee as claimed by the appellant. Therefore, the demand is rightly confirmed by the learned Commissioner. However, we find that since the appellant is a Government of India enterprise, allegation of suppression of fact, in our view, is not sustainable. Consequently, imposition of penalty also cannot be sustained. In the result, the impugned order is modified to the extent confirmation of demand with interest for the normal period. Penalty is set aside. Appeal is partly allowed.

(Operative part of this Order was pronounced in Open Court on conclusion of the hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

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