CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 1

SERVICE TAX Appeal No. 50217 of 2014

(Arising out of Order–in-Original No. 31/ COMMR/ IND/ST/2013 dated 15.10.2013 passed by Commissioner of Customs, Central Excise and Service Tax, Indore)

M/s. Bharat Sanchar Nigam Limited **.... Appellant**
(tdm), Telephone Exchange Building,
2nd Floor Doordarshan Bhawan,
Diversion Road, Khargone, MP-451001

Versus

Commissioner of Central Excise **....Respondent**
And Service Tax, Indore
P.B. No. 10, Manak Bagh Road,
Manik Bagh Palace,
Indore-452001

APPEARANCE:
Mr. Himanshu Khemuka, Advocate for the Appellant
Mr. P.Juneja, Authorised Representative for the Respondent

CORAM : HON'BLE MR.JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing/ Decision: **13 November 2019**

FINAL ORDER No.: 51499 / 2019

JUSTICE DILIP GUPTA

This Appeal seeks the quashing of the order dated 15 October 2013 passed by the Commissioner of Customs, Central Excise and Service Tax, Indore[1] by which the demand of Service Tax has been confirmed with penalty and interest.

2. The issue involved in this appeal is as to whether

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1. the Commissioner

Service Tax liability is to be discharged on the amount actually received by the Appellant or on the amount shown in the trial balance sheet. According to the Appellant, the show cause notice was issued on the basis of an audit conducted on 26 August 2010 in which figures shown in the trial balance were taken as the amount on which Service Tax was to be paid by the Appellant. The contention of the Appellant is that in relation to the period from financial year 2007-08 to September 2009 the Appellant was liable to pay Service Tax on the amount actually received by the Appellant and for this submission the Appellant has placed reliance upon a Trade Notice dated 3 January 1997 issued by the Rajkot Commissionerate.

3. The Commissioner has in the impugned order observed that the Appellant has not been able to submit a reconciliation statement and even the certificate issued by the Chartered Accountant on 20 September 2013 does not explain the position.

4. There is no hesitation in accepting the contention of the Appellant that Service Tax has to be paid on the basis of the amount received during that particular period. This is clear from the Trade Notice dated 3 January 1997 of which the relevant portion is reproduced below:

> "I.ISSUE – Difference between billed amount and amount actually collected
>
> I has been represented that there are difference between the amount of service tax to be collected (based on billed amount) and service tax

As per Section 67 (b) and 68 of Service Tax Act (Chapter V of Finance actually collected.

Act, 1994) the amount of service tax has to be levied on the value of the telephone bills received during the month and the amount of service tax collected should be paid to the credit of Central Government by 15th of the following month.

Decision – The amount of service tax may be collected on the value of taxable services, i.e., the telephone bills received during the month rather than billed. Department may not insists at this stage for reconciliation of the figures of such service tax billed and service tax collected and may place reliance on the financial control system of Telecom Department for the reconciliation of the telephone bills which would automatically mean reconciliation of service tax."

5. Though in the reply submitted by the Appellant and in the written submissions that were filed during the course of personal hearing, the Appellant had submitted that Service Tax had been paid on the amount actually received by the Appellant during the period but it will be appropriate to remand the matter to the Commissioner to examine the limited issue as to whether the Appellant had paid Service Tax on amount actually received by the Appellant during the period in question because Service Tax was required to be paid at the relevant time on the amount actually received by the Appellant.

6. At present it is not considered necessary to examine the submission of learned Counsel for the Appellant that the show cause notice was issued beyond the normal period of limitation because if the Appellant is still aggrieved by the order passed by the Commissioner after remand, it will be open to the Appellant to raise this issue in the Appeal.

7. The Commissioner shall now pass a fresh order in the light of the observations made above expeditiously and preferably within three weeks. For this purpose, the Appellant shall appear before the Commissioner on 2 December 2019 with the relevant documents. The Commissioner shall take a decision in the next two weeks. The impugned order is, accordingly, set aside and the appeal is allowed to the extent indicated above.

(Dictated and pronounced in the open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(BIJAY KUMAR)
MEMBER (TECHNICAL)

ARCHANA