CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 56696 of 2013-SM

(Arising out of order-in-original No. COMMISSIONER/RPR/ST/122/2012 dated 24.12.2012 passed by the Commissioner, Central Excise & Service Tax, Raipur).

Bharat Sanchar Nigam Limited **Appellant**
Agrasen Chowk, Bus Stand Road
Bilaspur, Chhattisgarh.

VERSUS

Commissioner of Central Excise and Service Tax, Central Excise Building **Respondent**
Dhamtari Road, Tikrapara
Raipur-492001.

APPEARANCE:

None for the appellant
Shri K. Poddar, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER NO. 51511/2019

DATE OF HEARING: 10.07.2019
DATE OF DECISION: 10.07.2019

ANIL CHOUDHARY:

When the case is called, Counsel for the appellant is absent on call inspite of issue of notice by way of last chance, which was issued on 17.05.2019 fixing date of hearing today, copy of hearing notice was sent by registered post to the appellant as well as to the Counsel. Further, I find that this appeal was earlier dismissed for default and subsequently restored by Miscellaneous Order dated

28.12.2018. Accordingly, I decide to dispose of the appeal ex-parte, after hearing the learned Authorised Representative for the Revenue and after going through the grounds of appeal and statements of facts.

2. Vide impugned order-in-original, I find that out of the total demand proposed in the show cause notice dated 13.04.2011, for the period under dispute April, 2004 to December, 2007, invoking the extended period of limitation, the proposed demand for short payment of service tax was Rs. 84,60,169/-. Further, with proposal to demand interest and penalty under Sections 77 and 78 of the Act. Interest was also demanded on another amount of Rs. 14,06,796/-, which was already paid.

3. Vide order-in-original, demand for Rs. 84,60,169/- was dropped as the said amount stood adjusted from service tax paid in excess during the period under dispute. Further, the amount of Rs. 14,06,796/- was confirmed on the sale of sim cards for the period April, 2004 to December, 2007. As the said amount was already paid, it was appropriated. However, interest was confirmed under Section 75 on the amount of Rs.14,06,796/-. Further, penalty was imposed under Section 76 @ Rs. 200/- per day upto 18.04.2006 and thereafter 2% per month for failure. Another penalty of Rs. 1,000/- was imposed under Section 77 for not declaring correct amount of taxable service and further penalty of Rs. 14,06,796/- was imposed under Section 78. Being aggrieved, the appellant is before this Tribunal.

4. Heard the learned Authorised Representative for Revenue, and perused the record.

5. Having considered the rival contentions and the grounds of appeal, I find that the learned Commissioner in para 6.1.3 has recorded, the amount of Rs. 84,60,169/- is already paid and finding that the appellant is a Public Sector Undertaking, thus there is no intention to evade payment of service tax. No such allegation is attributable against them. Accordingly, it is held that appellant is not liable for imposition of penalty under Section 76, 77 and 78 of the Finance Act. So far the amount of Rs. 14,06,796/- is concerned, it has been held that the appellant have suppressed the value of services in respect to sale of sim cards by not declaring the value in ST-3 return and accordingly penalty has been imposed under Section 78. I take judicial notice of the dispute, that during the relevant period as to whether sale of sim cards is sale of goods or is value of service. The said controversy was finally settled by Hon'ble Supreme Court sometime in the year 2005-06 where Hon'ble Supreme Court held that sim cards is not goods and the value of sim cards received by the telecom companies is value of the service. Thus, only service tax is payable and no sales tax is payable on sale of sim cards. In this view of the matter, I hold that there is no suppression of facts or any contumacious conduct is made out on part of the appellant. Accordingly, I set aside the penalties imposed under Section 76, 77 and 78 of the Finance Act. The liability to pay interest under section 75, stands confirmed. The appellant is

directed to calculate the interest and file a copy of the same before the adjudicating authority, for amount of tax payable. The same shall be payable by the appellant within a period of 45 days from the date of receipt of intimation by the appellant from the Department.

6. Thus, the appeal is allowed in part as indicated herein above.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant