

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH**

Dated: 10/06/2014

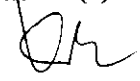
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/52420-52421/2014-CU[DB] dated 23/05/2014

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(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	ST/817/2008 ST/816/2008	BHARAT SANCHAR NIGAM LIMITED O/o Chief General Mgr(Mtee) Northern Telecom Region, DTO Building, Prasad Nagar, N Delhi.

		Name and Address of Respondent
1	ST/817/2008 ST/816/2008	C.S.T. DELHI 17-B, I.P. Estate, IAEA House, New Delhi.

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s):

Shri.Alok Mahajan, Advocate

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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

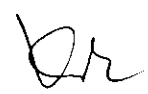
9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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 C.D.R. 14 Office Copy 15 Guard File


Asstt. Registrar(CUSTOMS Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, PRINCIPAL BENCH NEW DELHI
COURT NO. I**

Date of Hearing/decision: 23.05.2014

Appeal No. ST/816/2008 & ST/817/2008-CU[DB]

[Arising out of Order-In-Appeal No.69/VKG/2008, dt. 29.08.08, passed by Commissioner of Service Tax, – New Delhi]

For approval and signature:

Hon'ble Mr. Justice G.Raghuram, President

Hon'ble Mr. Rakesh Kumar, Member(Technical)

	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
	Whether Their Lordships wish to see the fair copy of the Order?	
	Whether Order is to be circulated to the Departmental authorities?	

Bharat Sanchar Nigam Limited

Appellant

Vs.

C.S.T. – Delhi

Respondent

Appearance:

Sh. Alok Mahajan, Advocate – for the Appellant

Sh. Jayant Sahay, DR– for the Respondent

CORAM :

Hon'ble Mr. Justice G.Raghuram, President

Hon'ble Mr. Rakesh Kumar, Member (Technical)

FINAL ORDER NO: 52420-52421/2014



Per Rakesh Kumar:-

The facts leading to filing of these appeals are, in brief, as under:-

1.1 The appellant, a Government of India Undertaking, are engaged in providing telecommunication services. The Commissioner, Service Tax, Delhi vide order-in-Original dated 1.9.2008 confirmed service tax demand of Rs.7,63,100/- and Cenvat Credit demand of Rs.4,66,918/- along with interest and imposed penalties on them under Section 76 on the ground that :-

- (a) for the month of October, 2003, whereas the tax payment through the Department of Telecommunication was Rs.40,15,010/-, the service tax payable worked out to Rs.43,40,626/- and as such, there is short payment of Rs.3,25,625/-;
- (b) for December, 2003 against service tax liability of Rs.22,58,992/-, the payment of service tax through department of Telecommunication was Rs.18,75,318/- and as such, there was short payment of Rs.39,07,354/-;
- (c) for the month of Feb. 2004, there is short payment of Rs.53,080/- ; and
- (d) they have wrongly availed Cenvat Credit of Rs.4,66,918/- as this credit has been taken on the basis of the invoices in which the important details like service tax registration number of the



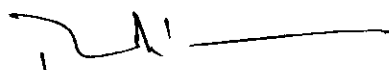
service providers, description of the input services, etc. are not mentioned.

1.2 Against this order of the Commissioner Appeal No. E/ST/817/2008 has been filed.

1.3 The Commissioner vide order-in-original dated 27.08. 2008 confirmed the service tax demand of Rs.19,46,796/- and Cenvat Credit demand of Rs.3,25,487/- against the appellant along with interest and imposed penalties under Section 76 and Section 77 on the grounds that:-

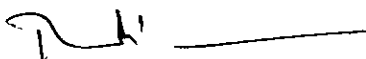
- (a) during the period from July, 2004 to September, 2004, their service tax liability on the basis of the amount realized for the value of the taxable services provided worked out to Rs.1,39,16,720/-, against which they have paid only an amount of Rs.1,20,64,134/- and, thus, there is short payment of Rs.18,52,586/- and besides the service tax, education cess of Rs.94,210/- is also leviable; and
- (b) The Cenvat Credit of Rs.3,25,487/- has been availed ~~taken~~ against the invoices, which do not have the service tax registration, description ^{of} input services etc.

1.4 Against this order of the Commissioner, the Appeal No.ST/817/2008 has been filed.



2. Heard both the sides.

3. Sh. Alok Mahajan, Advocate, the leaned counsel for the appellant, pleaded that service tax demand of Rs.18,52,586/- conformed by the order-in-original dt. 27.08.2008 passed by the Commissioner is on the basis that in the ST-3 Return for the period from 01.04.2004 to 30.09.2004, while the service tax payable on the basis of the amount of Rs.16,21,17,485/- realized, works out to Rs.1,39,16,720/- the appellant have paid service tax of only Rs.1,20,64,134/-, that this demand is totally incorrect as amount of Rs.16,21,17,485/- realized by the appellant from period 01.01.2004 to 30.09.2004 also includes inter interconnect usage charges (IUC) on which no service tax was payable, that though this plea had been made before the Commissioner, the same has been totally ignored and hence this demand is not sustainable, that as regards demand of Education Cess amounting to Rs.94,210/- confirmed vide order-in-original dt. 27.08.2008, the same has been demanded in respect of bills raised by the Appellant during period prior to 10.09.2004 when there was no Education Cess, that though this plea had been made before the Commissioner, the same has been ignored and no finding has been given on the same and in view of this, the Education Cess demand of Rs.94,210/- is also not sustainable, that as regards the Cenvat Credit demand of Rs.3,25,487/- confirmed by the Commissioner vide order -in-original dt.27.08.08, the same has been confirmed on the ground that invoices on the basis on which this credit has been taken do not have certain relevant particulars like services providers registration number, nature of service provided etc., that the ground on which the Cenvat Credit has been denied is in-correct



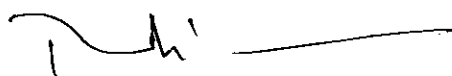
and in fact the same has been denied ~~ground~~ without considering the appellant's submissions, that in view of the above submissions, the impugned order dt. 27.08.08 passed by the Commissioner confirming the service tax demand of Rs.18,52,586/-, Education Cess demand of Rs.94,210/- and Cenvat Credit demand of Rs. 3,25,887/- along with interest and imposition of penalty on the appellant is not sustainable, that as regards the order-in-original dt. 01.09.08 passed by the Commissioner by which the service tax demand of Rs.7,63,100/- and Cenvat Credit demand of Rs.4,66,918/- has been confirmed along with interest, the same is incorrect and has been passed without considering the Appellant's submissions, that service tax demand of Rs.7,63,100/- confirmed by the Commissioner pertains to Oct.'03, Dec.'03 and Feb.'04 and the same has been confirmed on the ground that the service tax paid during these months is less than the service tax payable on the basis of the amounts realized, that this difference is for the reason that the amounts realized mentioned in the ST-3 returns also includes interconnect usage charges (IUC) on which no service tax is chargeable, that this plea had been made before the Commissioner but no findings has been given on the same, that as regards the Cenvat Credit demand of Rs.4,66,918/- the same has been dis-allowed on the ground that the invoices of the service providers on the basis of this credit has been taken, do not contain the relevant particulars like service provider registration number, nature of the service provided etc, that the ground on which this credit has been dis-allowed is in-correct and that in view of the above submissions the impugned orders are not correct.



4. Sh. Jayant Sahay, learned DR, defended the impugned order by reiterating the findings of the Commissioner.

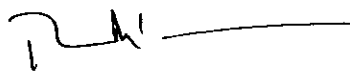
5. We have considered the submissions from both the sides and perused the records. In both the appeals, the service tax demands of Rs.7,63,100/- and Rs.18,52,856/- have been confirmed on the ground that during the period for which these demands have been confirmed, the service tax payable on the basis of the amount realized was more than the service tax actually paid. The appellant's contention is that the amounts realized as reflected in the respective ST-3 returns also include interconnect usage charges, which during the period of dispute were not taxable and for this reason only, service tax on the amounts realized against IUC had not been paid and that though this plea had been made before the Commissioner no finding has been given. We find in these cases that this plea has been made and the same has not been considered. Therefore the service tax demands of Rs.7,63,100/- and Rs.18,52,856/- have to be set aside and remanded to the Commissioner for de-novo adjudication after considering the appellant's plea that the amounts realized as mentioned in the respective ST-3 returns also included amounts realized for providing interconnection which was not taxable and if this plea of the appellant is correct, these demands would not be sustainable.

6. As regards the demand of Education Cess amounting to Rs.94,210/- confirmed vide order-in-original dt. 28.08.08, the contention of the appellant is that this Education Cess demand pertains to period prior to 10.09.04 i.e. in respect of the bills raised for the



period prior to 10.09.04, while Education Cess has become payable w.e.f. 10.09.04 and hence in respect of the bill raised during the period prior ~~to~~ ^{to 10/9/04,} no Education Cess would be payable. We find that this plea had been made before the Commissioner but no findings ~~have~~ been given on it by the Commissioner and if this plea is correct, this demand also would not be sustainable, as Education Cess which had become leviable w.e.f. 10.09.04, would not be chargeable in respect of the service provided during the period prior to 10.09.04, even if the payment in respect of the service had been received during period w.e.f. 10.09.04. Therefore the demand for education cess has to be set aside and has to be remanded for de-novo adjudication after ascertaining the facts.

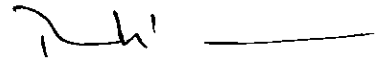
7. As regards the demands of Cenvat Credit confirmed by the Commissioner in these two orders, the appellant's plea is that while the Commissioner has confirmed the demands on the ground that invoices on the basis of ^{which} this credit has been taken, are not valid invoices, as the same do not contain the relevant details, this is not so. In our view, this matter would have to be remanded for de-novo decision after considering this plea of the appellant after examining each of the disputed invoices. If the invoices contain the relevant details as required in terms of the Provisions of Service Tax Rules, 1994, Cenvat Credit would be admissible.



8. In view of the above discussion, the impugned orders are set aside and the matters are remanded to the Commissioner of de-novo adjudication in terms of our directions in this order.



(Justice G.Raghuram)
President



(Rakesh Kumar)
Member (Technical)

S.Kaur