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

Dated: 21/07/2014

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/52859/2014-CU[DB]** dated **10/07/2014**

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/282/2009 | **GENERAL MANAGER, BHARAT SANCHAR NIGAM LTD.** MOTI DUNGRI, ALWAR, RAJASTHAN. |
| | | Name and Address of Respondent |
| 2 | | **C.C.E. JAIPUR I** N.C.R.Building, Statue Circle, "C" Scheme, jaipur 302005. |

**Copy To**

3Advocate(s) / Consultant(s):

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**advocates**
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**New Delhi-110024**

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)**

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,**
West Block No.2, R.K.Puram, New Delhi

**COURT-I**

**Date of hearing/decision: 10.07.2014**

For Approval and Signature:
Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R. K. Singh, Technical Member

| | | |
|---|---|---|
| 1 | Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982? | |
| 2 | Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | |
| 3 | Whether their Lordships wish to see the fair copy of the Order? | |
| 4 | Whether Order is to be circulated to the Departmental authorities? | |

**Service Tax Appeal No. 282 of 2009**
(Arising out of the Order-in-Appeal No. 1(DK/ST/JPR-I/2009 dated 13.01.2009 passed by the Commissioner (Appeals-I), Customs, Central Excise Jaipur).

M/s Bharat Sanchar Nigam Limited — Appellant

Vs.

CCE, Jaipur — Revenue

Appearance: Shri Chandan Kumar, Advocate for the appellant
Shri Govind Dixit, DR for the Revenue

Coram: Hon'ble Mr. Justice G.Raghuram, President
Hon'ble Mr. R. K. Singh, Technical Member

Final Order No. 52859/2014

**Per R. K. Singh**:

The appellants herein filed this appeal against Order-in-Appeal No. 1(DK/ST/JPR-I/2009 dated 13.01.2009 in terms of which the

Commissioner (Appeals) had upheld the adjustment of Rs. 11,18,182/- out of the total refund of Rs. 11,79,720/- sanctioned vide Order-in-original No. 44/R/2007 passed by Assistant Commissioner, Central Excise, Alwar which adjusted the impugned amount of Rs. 11,18,182/- and refunded only the net (remaining) amount of Rs. 61,538/- in form of cenvat credit. Briefly stated, the facts of the case are as under:

The appellants were given a show cause notice dated 17.01.2007 asking them to show cause as to why their refund claim of Rs.11,79,720/- should not be rejected. The appellants submitted their reply dated 25.05.2007. The Assistant Commissioner issued a corrigendum (dated 17.07.2007) to the earlier show cause notice stating that as the appellants had taken credit to the tune of Rs. 11,18,182/- on the strength of the invoices for capital goods issued by their Head Office, the same was not admissible as their Head Office was not registered as a registered dealer and therefore asking why their refund should not be rejected to the extent of Rs. 11,18,182/-. The appellants contended that the refund sought was of the excess amount paid by them which should be sanctioned and that the amount of cenvat credit on capital goods (Rs.11,18,182/-) was rightly taken on the strength of the documents issued by their Head Office in respect of the capital goods actually used by them for providing the output service and they and their Head Office are not separate entities.

2. We have considered the facts of the case and the appellants submissions. It is seen that vide Order-in-original No. 44/R/2007, the Assistant Commissioner sanctioned the entire amount of refund sought

by them. In other words, the Assistant Commissioner sanctioned the refund of Rs.11,79,720/-. Having sanctioned the entire amount as refund, the Assistant Commissioner, recording that Rs.11,18,182/- availed and utilised by the appellants was not found admissible on the ground of its availment on the strength of improper documents under Rule 9 of the Cenvat Credit Rules, went ahead and deducted Rs.11,18,182/- from the sanctioned amount. In this regard, it is pertinent to state that while confirmed demand can be adjusted from the amount of refund, there is no provision to adjust unconfirmed demand from the amount of refund. It is seen that there has been no show cause notice given to the appellants for showing cause as to why the cenvat credit amount of Rs.11,18,182/- (adjusted from the amount of refund sanctioned) was inadmissible to them and how the same was recoverable under what provision of law and how it was not hit by time bar inspite of having been taken in the year 2005-06. Even if the corrigendum issued on 17.07.2007 is attempted to be treated as a show cause notice, the said corrigendum falls fatally short of the requirement of a notice under Section 73 of the Finance Act, 1994 inasmuch as the said corrigendum does not even mention Section 73 ibid anywhere at all and it also does not contain any grounds to allege as to how the recovery, even if the said credit was held to be inadmissible, was not hit by time bar. Indeed the said corrigendum nowhere requires the appellants to show cause as to why the said amount should not be held inadmissible and why / how the same is recoverable without being hit by time bar. It merely stated that the said amount appeared to be not admissible to them and then straightaway called upon the appellants to show cause as to why the refund claim should not be rejected to the extent of Rs. 11,18,182/-.

3. While it is arguable that the amount of Rs. 11,18,182/- taken as cenvat credit on the strength of the document received by the Head Office of the appellants is clearly admissible as has been held in several cases of the appellants themselves, in the instant case, this point is beside the issue.

4. As has been stated earlier vide the said order-in-original the refund claim has not been rejected to the extent of Rs. 11,18,182/-. As a matter of fact, it has been sanctioned 100% inasmuch as the refund sanctioned is Rs.11,79,720/-. Having sanctioned the full amount, there was no legal authority to adjust the amount of Rs. 11,18,182/- as the same cannot be held to be a confirmed demand for the reasons recorded earlier. The learned AR also appreciated as much.

5. In view of the above discussion, we allow the appellants' appeal, set aside the impugned order and order the refund of the remaining amount of Rs. 11,18,182/- alongwith applicable interest.

(Operative part of the order was already pronounced in the Court).

(Justice G. Raghuram)
President

(R. K. Singh)
Technical Member

Pant