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

Appeal No. E/2886/2004 - EX[DB] Date 16/12/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.G.M.BHARAT SANCHAR NIGAM LTD.
TELECOM FACTORY WRIGHT TOWN JABALPUT M.P
C.G.M.BHARAT SANCHAR NIGAM LTD. Appellant
Vs
Respondent
C.C.E.BHOPAL

I am directed to transmit herewith a certified copy of **Final order No.** 929/2008- EX[DB] dated 20-11-08 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
C.C.E.BHOPAL
48,ADMINISTRATIVE AREA AREA HILLS HOSHANGABAD ROAD,BHOPAL
2. Adv. / Consult SH. ATUL GUPTA, ADV.,
B-1/1289-A, VASANT KUNJ,
N. DELHI-70
3 C.D.R
4 ~~J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagarava Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

~~M/S HFCL SATELITE COMMUNICATION LTD.~~
~~5TH FLOOR HINDI BHAWAN VISHNU DIGAMBER MARG NEW DELHI~~

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

COURT-II

Date of hearing/decision: 14.11.2008

Excise Appeal No. 2886 of 2004
[Arising out of the order in appeal No. 123/CE/BPL/2004 dated 17.3.2004 passed by the Commissioner of Central Excise (Appeals), Bhopal].

Chief General Manager — Appellant
M/s Bharat Sanchar Nigam Limited
[Rep. by Sh. Atul Gupta, Advocate for the appellant]

Vs.

CCE, Bhopal — Respondent
[Rep. by Sh. M. M. Singh, DR for the respondent]

Coram: Hon'ble Mr. D.N. Panda, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

FINAL Order No. 929/08-EX
Per D.N. Panda.

This appeal is against the appellate order dated 17.3.2004. Learned Authorised Representative submits that the appellate order has departed from the matter in controversy which was subject matter of Order-in-original dated 10.02.99. That adjudication order was outcome of Order-in-Appeal No. 176/CE/BPL/98 dated 18/19th March 1998. Learned adjudicating authority categorically stated in the order that quantum was only ~~is~~ the requirement to be determined in accordance with the decision made by the learned Commissioner (Appeals) in order dated 18/19th March 1998. This being the only requirement, according to the appellant, goods of 20944 kgs. ~~was~~ whether scrap or not, was required to be decided and the balance quantity of 93,416 kgs. which was scrap whether was dutiable needed determination. Learned adjudicating authority should have decided this matter in controversy only. Against the order of learned Adjudicating Authority who held against the appellant on both the issues the learned appellate authority without deciding these two issues went to decide a different issue which was not subject matter of dispute.

2. He drew our attention to a letter dated 13.12.1994 appearing at page 21 of the paper book which is page No. 2 of the denovo order. He submits that the quantity of 2,09,440 kgs. of the goods referred to in that letter was only in dispute and that only should have been decided by the learned Commissioner (Appeals). He further submits that 93,416 kgs. of scrap forming part of 2,09,440 kgs. whether dutiable was to be decided.

3. Learned DR appearing on behalf of Revenue submits that a bare perusal of the appellate order throws light that the appellant's dispute was decided by the learned appellate authority below by earlier order dated 18/19th March 1998.

4. Heard both sides and perused the records.

5. Appellate decision should show the matter in controversy, reason of decision and decision thereon by a speaking order. Such a legal requirement is absent in the order in appeal. We disagree with the proposition of the appellant as to deciding dutiability of 93,416 kgs. of scrap because quantification was only the decision that was subject matter of denovo adjudication but not the nature of goods to be decided. The appellant does not dispute nature of 93,416 kgs.. He agrees that the same was scrap. Therefore, the appellant looses his case on the quantity of 93,416 since nature thereof not being in dispute. Therefore, levy on such quantity remains untouched. We are unable to agree with the learned Authorised Representative for the reason that quantification was only subject matter of the appellate decision by order dated 18/19th March 1998 as aforesaid.

6. For the controversy on 2,09,440 kgs. of scrap, the appellant having disputed appropriate quantification thereof we consider to direct the learned adjudicating authority to hear the grievance of the appellant in respect of the quantity of 209440 kgs. which is subject matter of letter 13.12.1994 issued by the learned Assistant Commissioner, Central Excise. Since the matter goes to the root of the natural justice, we are of the view that the appellant should get an opportunity for rebuttal

in respect of quantity of 2,09,440 kgs. of goods before the learned adjudicating authority. The appellant thus gets an opportunity for rebuttal of the charge of this quantity only.

7. Learned adjudicating authority shall fix the date of hearing in the month of January 2009 and intimate to the appellant for the opportunity of hearing. Learned authorized representative appearing on behalf of the appellant undertakes today before this forum that the matter being very old and nearly more than a decade they will not seek any adjournment unless otherwise warranted. They shall co-operate with the learned Adjudicating Authority for disposal of the matter and it shall be endeavor of both sides that an expeditious disposal of the matter be made by end of March 2009.

8. With the aforesaid direction we make remand of the order on the aforesaid limited issue confirming the demand relating to the quantity of 93,446 kgs. of goods. In the result, appeal relating to duty demand is partly confirmed and partly remanded for an opportunity to follow course of natural justice in respect of the disputed quantity as aforesaid.

9. Learned Counsel prayed that penalty was not leviable. That remained unanswered by us because the learned adjudicating authority while deciding the above limited issue shall have opportunity to decide on leviability of penalty, if any leviable.

10. In the result, so far as penalty is concerned that aspect is also remanded by this order to the learned adjudicating authority to do justice to both the sides.

(Dictated and pronounced in the open Court)

[D.N. Panda]
Judicial Member

[Rakesh Kumar]
Technical Member

[Pant]