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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

Appeal No. ST/89 /2007, ST/STAY/442/07 Date 05/06/2008

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

To :
M/S BHARAT SANCHAR NIGAM LTD.
60-VILVESHWARPURI, BEHIND SARDAR THANA,
MEERUT CANTT., MEERUT
M/S BHARAT SANCHAR NIGAM LTD. Appellant

Vs

C.C.E. MEERUT - I Respondent

I am directed to transmit herewith a certified copy of **Final order** No. ST/85/2008 **Customs** dated 07.05.08

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Along with Stay Order No ST/184/08

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
   C.C.E. MEERUT - I
   EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT
2. Adv. / Consult
   MR.RISHI & ASSOCIATES
   60-VILVESHWARPURI,BEHIND SADAR THANA, MEERUT CANTT, MEERUT.
3. S.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 Delhi -
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), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Customs Appeal Branch)

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

Service Tax Appeal No. 89 of 2007
Service Tax Stay Application No. 442 of 2007 with

[Arising out of Order-in-Appeal No. 246/CE/MRT I/2006 dated 14.11.2006 passed by Commissioner(Appeals) Central Excise, Meerut-1]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K.Das, Member (Judicial)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :
2. Whether it should be released under Rule 27 of the 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? :

No.

M/s. Bharat Sanchar Nigam Ltd. — Appellant

Vs.

Commissioner of Central Excise
Meerut — Respondent

Appearance:

Mr. Anurag Rishi, Advocate for the Appellant
Mr. B.K. Singh, DR for the Respondent

CORAM:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K.Das, Member (Judicial)

Date of decision : 7.5.2008

Final **ORDER NO. ST/85/08**
Stay Order ST/184/08.

Per P.K.Das (for the Bench):

As the issue involved in this case is in narrow compass, therefore, after granting stay, we take up the appeal for disposal.

2. Learned Advocate on behalf of the appellant submits that the amount of tax relates to Interconnectivity Usage Charges (IUC) and other non-taxable services. He relied upon the Board's Circular No. 91/2/2007-ST dated 12.3.2007.

3. After hearing both the sides and on perusal of the records, it is seen that the issue involved in this case as to whether service tax is leviable on Interconnectivity Usage Charges for the period 16.7.2001 to 31.3.2004. We find that Board vide Circular No. 91/2/2007-ST dated 12.3.07 clarified that service tax is not applicable to IUC for the period prior to the dates when the amended definition of 'telecommunication service' comes with effect vide Finance Bill, 2007. The relevant portion of Board's Circular is reproduced below:-

"3. As stated above, the interconnection usage service is provided by one telegraph authority to another telegraph

authority. In terms of the existing definition in the Finance Act, 1994, "telephone service" means any service provided to a subscriber by the telegraph authority in relation to a telephone connection. The subscriber means a person to whom any service of a telephone connection has been provided by the telegraph authority. Therefore, a subscriber in respect of telephone service is the person who avails of service of telephone connection. While providing service of interconnection usage, no service of telephone connection is provided to recipient telegraph authority. No doubt, it is a service in relation to a telephone connection; however, as long as service is not provided directly to a subscriber (as mentioned above), the service may not fall in the category of telephone service. Therefore, IUC would not be taxable under the category of service. Opinion of Law Ministry / Attorney General has also been obtained in the matter. Law Ministry and Attorney General have opined that ICU is not taxable in any of the existing taxable services."

4. In view of the above discussion, we find that demand of tax on IUC is not sustainable. The impugned order is set aside. Appeal is allowed with consequential relief. Stay petition also stands disposed of.

(Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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