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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/574 /2007 - CU[DB] Date 01/10/2008
ST/S/ 2382/08

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

To :
MAHANAGAR TELEPHONE NIGAM LTD

MR. M.M.SHARMA, GM(LAW) MAHANAGAR
TELEPHONE NIGAM LTD, KHURSHID LAL BHWAN,
JANPATH, N DELHI.
MAHANAGAR TELEPHONE NIGAM LTD Appellant

Vs

C.C.E. DELHI I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/263/08 **CU[DB]** dated 23/9/08

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax
alongwith stay order No ST/ 392/08

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent

C.C.E. DELHI I

C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

2. Adv. / Consult Sh. N.M. Sharma, Adv.
C/o Appellant

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 - 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), Thyagaraya 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-15
15 Office Copy
16 Guard file

Assistant Registrar

(Customs Appeal Branch)

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

Service Tax Appeal No. 574 /2007 with Service Tax Stay Application No. 2382 /2008

[Arising out of Order-in-Original No. 12/VKG/2007 dated 6.7.2007 passed by Commissioner of Service Tax, New Delhi]

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

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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?	:	No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3. Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

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Mahanagar Telephone Nigam Ltd. — Appellant

Vs.

Commissioner of Service Tax
New Delhi — Respondent

Appearance:

Mr. N.M. Sharma & Ms. V.Shruti Rao, Advocates for the Appellant
Mr. Vijay Kumar, DR for the Respondent

CORAM:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing : 23.9.2008

Final **ORDER NO. S1/263/08**
Stay Order No S7/392/08

Per M. Veeraiyan (for the Bench):

After hearing both sides, we waive the pre-deposit of the dues and with the consent of both the sides proceed to decide the appeal finally.

2. The appellant is a public sector undertaking and they were issued a show cause notice dated 4.3.05 proposing demand of service tax of around Rs.11 crores. The appellant filed a letter dated 22.4.05 raising preliminary objection to the show cause notice, stating that the procedure prescribed in the Board's circular No. 20/20/94-CX dated 11.2.94 which envisage a discussion with officials of the concerned PSU and the Central Excise department with a view to resolve the dispute and to avoid issue of show cause notice has not been followed. However, no reply has been filed. The appellant appeared for personal hearing. It is claimed that they have raised the preliminary objection once again before the learned Commissioner. However, according to the appellant, the Commissioner has not considered the preliminary objection and also without awaiting for the reply from the appellant, decided the issue confirming the huge demand against them.

4. The instructions of the Board dated 10.2.94 is basically a guideline to explore the possibility of resolving the dispute even without issue of show cause notices. Failure to follow this procedure cannot held to be vitiate the show cause notice which has already been issued as provided for in the statute. However, we note that the Commissioner has decided without getting the reply from the appellant and confirmed huge demand. In the interest of justice, we deem it proper to set aside the order of the Commissioner and remand the matter for fresh consideration. The appellant is directed to file the reply along with evidence relied upon on or before

7.11.08. The Commissioner shall take into account the reply to be submitted by the party and also grant reasonable opportunity of hearing and decide the matter afresh. It is also clarified that if the appellant does not file reply by the due date, the Commissioner is free to decide the issue on the basis of available evidence.

5. The appeal is allowed by way of remand. Stay application is also disposed of.

(Dictated & pronounced in the open Court)

(Justice S.N. Jha)
President

(M. Veeraiyan)
Member(Technical)

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