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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/492 /2007 - CU[DB] Date 16/03/2009
STRS/2141/07

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

To :
M/S B S N L

CHIEF ACCOUNT OFFICER (COMP.), O/O PRINCIPAL GENERAL MANAGER(TELECOM), BSNL, SECTOR 34, CHANDIGARH.
M/S B S N L

Appellant
Vs
C.C.E. CHANDIGARH
Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/106/2009 CU[DB]** dated 06.03.09 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/90/09

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
   C.C.E. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
   MR.G.C.BABBAR
   A-2474, SECTOR-19/C, CHANDIGARH
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. III

Service Tax Appeal No. 492 of 2007 &
Service Tax Stay Application No. 2141 of 2007

[Arising out of Order-in-Appeal No. 218/CE/APPL/CHD/2007 dated 28.6.2007 passed by Commissioner of Central Excise (Appeals), Chandigarh.]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. D.N.Panda, 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? : NO

2. Whether it should be released under Rule 27: of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? NO

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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Bharat Sanchar Nigam Ltd. Appellant

Vs.

Commissioner of Central Excise Respondent
Chandigarh

Appearance:

Mr. G.C. Babbar, Advocate for the Appellant
Mr. Vijay Kumar, SDR for the Respondent

CORAM:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. D.N.Panda, Member (Judicial)

Date of decision : 6.3.2009

Final **ORDER NO. 57/106/09**

Stay Order No 57/90/08

Per M. Veeraiyan (for the Bench):

After hearing both the sides for a while on the stay petition, we waive pre-deposit of the dues as per the impugned order and proceed to dispose of the appeal finally.

2. The rate of service tax has been enhanced from 8% to 10% with effect from 10.9.04. The appellant, a PSU, had raised the bills for the month of August payable in September. According to the learned Advocate, as the services were rendered in August, 2004, the rate of tax applicable is only 8% even though bills have been raised, payments have been received in September, 2004. In respect of PCO, they had a billing cycle of fortnight and, therefore, bills for the fortnight from 1.9.04 to 15.9.04 had been raised and during this period, rate of 8% was applicable for part of the period and higher rate of 10% for the rest of the period. The submission of the learned advocate is that the computer print out did not indicate break up for 1.9.04 to 9.9.04 and 10.9.04 to 15.9.04, they have rightly calculated and paid the tax and therefore there is no short levy at all. We have carefully considered the submissions from both sides and perused records. To us, it appears that this evidence has either not been placed before the lower authorities or has not been correctly appreciated.

3. To enable the correct appreciation of the factual position, we set aside the orders of the Commissioner (Appeals) and that of the original authority and remand the matter to the original authority for consideration of the submissions and the evidence. The appellants are directed to produce the evidence within one month from the date of receipt of this order. The original authority shall decide the issue after granting reasonable opportunity of hearing.

4. The appeal is allowed by way of remand. Stay petition is also disposed of.

(Dictated & pronounced in the open Court)

(M. Veeraiyan)
Technical Member

(D.N.Panda)
Judicial Member

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