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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/155 /2005 - CU[DB]
ST/S/2236/05,ST/ROA/209/10

Date 28/04/2010

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

To :
BHARAT SANCHAR NIGAM LTD.

BHARAT SANCHAR NIGAM LTD. Appellant

Vs

C.C.E. GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/13 2010 CU[DB]** dated 23.04.10 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/65/10, and Misc Order No ST/35/10

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   C.C.E. GHAZIABAD
   C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD 201302
2. Adv. / Consult
   MR.RAHUL KAUSHIK & K.C.KAUSHIK,ADV
   51, LAWYERS CHAMBERS, SUPREME COURT OF INDIA, N DELHI-110001
3. S.D.R
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise, I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
DIVISION BENCH

ST/ROA/209/10 in Appeal No.ST/155/05
ST/Stay/2236/05 in Appeal No.ST/155/05

(Arising out of Order-in-Appeal No.26-CE/GZB/2005 dated 28.2.2005 passed by the CCE & C(A), Ghaziabad)

Date of Hearing: 23.04.2010
Date of Decision: 23.04.2010

M/s.Bharat Sanchar Nigam Ltd. Appellant

Vs.

CCE, Ghaziabad Respondent

Present for the Appellant: Shri K.C.Kaushik, Advocate
Present for the Respondent: Shri Vijai Kumar, Advocate

Coram:

Hon'ble Dr.Chittaranjan Satapathy, Technical Member
Hon'ble Mr. D. N. Panda, Judicial Member

Final Order No S7/13/10

S Copy **ORDER NO.** S7/65/10

Misc Order No S7/35/10

PER: DR.CHITTARANJAN SATAPATHY

Heard both sides. This appeal was dismissed earlier on 19.12.2005 for want of COD clearance for pursuing the appeal before the Tribunal. The appellants have since obtained necessary clearance from the Committee on dispute. Hence the earlier order of dismissal dated 19.12.2005 is recalled and miscellaneous application for restoration of appeal is allowed and appeal is restored to its original number.

2. Shri K.C.Kaushik, learned Advocate for appellants states that the period in dispute is from July, 1994 to March, 1998 prior to formation of BSNL as a company. At the material time, the amount of tax was deposited in the Government account and therefore no interest is payable on subsequent delayed payment of tax to the Revenue Department in view of the judgment of the Tribunal in the cases of G.M.Telecom BSNL

vs. CCE, Chandigarh-2003 (160) ELT 318 and Chennai Telephones (BSNL) vs. CCE, Chennai-2006 (3) STR 159.

3. Heard DR, Shri Vijai Kumar. He supports the impugned order for payment of interest and states that since tax has been paid after a delay, the interest is payable. He also states that only the stay application may be decided and the appeal should be kept pending.

4. After hearing both sides, we find that exactly the same issue had come up earlier for decision before the Tribunal in the above cited cases. The view has been taken by the Tribunal that the appellants being Central Government department at the material time had strictly followed the procedure approved by Principal Chief Controller of Accounts and therefore, the appellants cannot be burden with interest liability. We also find that the amount of tax which was subsequently transferred to revenue department was actually deposited in the Consolidated Fund of India and was lying with the department. Under these circumstances, we are of the view that stay application requires to be allowed and also the appeal requires to be allowed as there is no warrant in this case to levy of interest and imposition of penalty in view of the cited decision of the Tribunal. We order accordingly.

5. Both the stay application and appeal are allowed.

(Dr. CHITTARANJAN SATAPATHY)
TECHNIAL MEMBER

(D.N.PANDA)
JUDICIAL MEMBER

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