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# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

## PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

## SINGLE MEMBER APPEAL BRANCH

Date 19/11/2009

Appeal No. ST/398 /2007 – SM[BR] &ST/ STAY /1755/2007-SM[BR]

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

To :
BHARAT SANCHAR NIGAM LTD
THE GM, TELECOM DISTRICT, BHARAT SANCHAR NIGAM LTD, AUTO BUILDING, G.E.ROAD, RAIPUR. 492001

BHARAT SANCHAR NIGAM LTD — Appellant
Vs
C.C.E. RAIPUR — Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 1451/2009 –SM[BR]&S/648/2009 dated 13.11.2009 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

**Copy to :**

1. Respondent
   C.C.E. RAIPUR
   CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.
2. Adv. / Consult
   MR.KAMAL SAWHNEY,ADV
   B-43, RETREAT APARTMENT,20 INDRA PRASTHA EXTENSION, DELHI-92

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 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

# CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

**COURT-III**

**Date of hearing/decision: 13.11.2009**

**Stay Application No.1755 of 2007 and**
**Service Tax Appeal No.398 of 2007-SM**

Arising out of the order in appeal No.Commissioner/RPR/09-27/2007 dated 27th February 2007 passed by the Commissioner, Central Excise, & Customs, Raipur, (C.G.).

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Member (Technical)

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

Bharat Sanchar Nigam Ltd. ... Appellant

Vs.

C.C.E.& Customs, Raipur ... Respondent

Appearance:

Shri Kamal Sawhney, Advocate for the appellants
Shri S.K. Bhaskar, Authorized Departmental Representative (SDR) for the Revenue

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 1451/2009 SM(BR) + S-648/2009 SM (BR)

Per M. Veeraiyan:

Heard both sides on the stay petition. It is felt that it is expedient to dispose of the appeal finally. Accordingly, I waive pre-deposit of dues as per the impugned order and proceed to dispose of the appeal finally.

2. The relevant facts, in brief, are that the appellant is rendering services under the category of "Lease Line Circuit", "Telegraph and Telex services". For the quarter ending December, 2003, they filed two ST-3 returns – one for Lease Line Circuit and the other for Telegraphic and Telex service. In the ST-3 returns for the Lease Line Circuit service, duty payment was shown under the challan under which service tax was paid in respect of telegraph and telex. Similar is the position for the quarter ending March, 2004. The original authority confirmed the demand of Rs.8,60,225/- relating to the months of December 2003 and March, 2004 in respect of Lease Line Circuit services on the ground that the appellant has not provided the break-up value of the taxable service along with documentary evidence to prove the claim regarding payment of S. Tax.

3. Learned Advocate for the appellant submits that there is no short levy as held and that they shall be able to reconcile the service tax payable for each category of services for the months of December 2003 and March, 2004 and show that the correct amounts have been deposited and mistake, if any, is only technical in nature in paying the service tax by a combined challan. Accordingly, he requests for remanding the matter for fresh consideration.

4. Learned SDR, in the light of the submissions by the learned Advocate has no objection for the said proposal.

5. In the light of the above, I deem it appropriate to set aside the order of the Commissioner and remand the matter for fresh consideration after granting reasonable opportunity of hearing. The appellant shall file the written submission along with the documentary evidence before the Commissioner within one month from the date of receipt of this order.

6. Appeal is allowed by way of remand. Stay petition is also disposed of.

(M. Veeraiyan)
Member (Technical)