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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

Appeal No. **E/289 /2010 – SM[BR] &E/STAY/290/2010&COD/40/2010&MISC/125/2010-SM[BR]** Date **09/11/2011**

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

To :

THE GENERAL MANAGER, TELECOM DISTRICT,
BHARAT SANCHAR NIGAM LTD.
OPPOSITE SAVITRI SCHOOL, CIVIL LINES,
AJMER (RAJASTHAN)-305001.
THE GENERAL MANAGER, TELECOM DISTRICT, Appellant
BHARAT SANCHAR NIGAM LTD.

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.749/2011-SM[BR]&S/722/2011&M/** 189-190/2011dted3.10. passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.KAMAL SAWHNEY,ADV
W-118, GREATAR KAILASH-I, N DELHI.110048

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, NEW DELHI

COURT No. II

COD No.40 of 2010
Misc. Application No.125 of 2010
Stay Application No.290 of 2010
Excise Appeal No.289 of 2010(SM)

Date of Hearing / Decision : 3.10.2011.

M/s GM, BSNL	Appellant
Versus	
CCE, Jaipur	Respondent

Coram: Hon'ble Mr. D.N.Panda, Judicial Member

Present for the Appellant - None.
Present for Respondent - Ms. R.Jagdev, SDR

Final **Order No.** 749/2011 SM (Br) & S-722/2011 SM **Dated :** & M-189-190/2011 SM (Br)

Per D.N. Panda:

Although there is an application for adjournment, the case warranted final disposal in view of the difference in opinion between the Commissioner reviewing the adjudication order and the Commissioner who decided the appeal of the assessee. To look into the matter, COD application is allowed as there is only 13 days delay in seeking appeal remedy in absence of malafide or deliberate intention of the Appellant.

2. The appellant has also made stay application. But the history of the case discloses that when the assessee faced adjudication against the allegation of improper availment of Cenvat Credit, adjudication ended with levy of penalty only

dropping the demand of duty against Cenvat Credit availed. Such an adjudication was before first Appellate Authority who concurred with adjudicating authority in terms of para 6 of his order dated 6.2.2008. While concurring he has made a categorical observation that the adjudicating authority brought out the correlation between the duty demand apparent from the invoice of Cenvat Credit availed through ATDS. Therefore, he held that adjudicating authority in effect did not find availment of Cenvat Credit erroneous under law. For such reason when he was of the firm view that there was no contravention of Rule 9 and Cenvat Credit Rules, 2004, imposition of penalty was undesirable.

3. Before the appellate order could see the light of the day, Show Cause Notice was issued for review on 22.01.2009. This is an essence in conflict with law because it appears that the reviewing Commissioner. Without any regard to the first appellate order passed made review although the same Commissioner who was Appellate Authority acted as a reviewing authority without looking to his own decision in para 6 of the order dated 6.2.2008 and again reversed his decision by a review in terms of order dated 5.10.2009 to disallow Cenvat Credit while dropping the penalty. Such an action of the authority shakes public confidence and results in public mischief.

4. In view of the aforesaid observation, dispensing pre-deposit, appeal is allowed, setting aside the impugned order.

5. It appears that Misc.App.(COD) No.125/2010 registered as Misc.App. (Lifting of Attachment) is against recovery through the attachment. In view of aforesaid order, this application has become infractuous.

(Dictated and pronounced in the Open Court)

(D.N.Panda)
Judicial Member

RK-I