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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/63 /2011 – SM[BR] E /STAY / 80 /2011-SM[BR] **Date 15/11/2011**

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

To :
M/S TELECOM DISTRICT MANAGER,BHARAT SANCHAR NIGAM LTD.,
ETAWA-01 (U.P.)

M/S TELECOM DISTRICT MANAGER,BHARAT SANCHAR NIGAM LTD., Appellant

Vs

C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No. 769/2011-SM[BR]&S/757/2011** dated 7.10.2011 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. KANPUR
117/7, SARVODAYA NAGAR,
KANPUR 208005.

2. Adv. / Consult **SHRI K.C. KAUSHIK ADV.**
51, LAWYERS CHAMBERS, SUPREME COURT OF INDIA
NEW DELHI-1.

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 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copv
13. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram,
NEW DELHI

COURT-II

E/Stay/80/2011-SM in
Central Excise appeal No. 63/2011-SM

Date of hearing/decision: 7th October, 2011

Telecom District Manager,
B.S.N.L. Appellant

Versus

CCE, Kanpur Respondent

Presence:

Shri K.C. Kaushik, Advocate for the appellant;
Mrs. R. Jagdev, SDR for the Revenue

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

FINAL ORDER NO. 769/2011 SM (Br) **DATED**

Per D.N. PANDA: S-757/2011 SM (Br)

Learned Counsel submits that because Audit advised the department to reject the documents entitling the appellant for Cenvat credit as those were zerox copies, the appellant was denied Cenvat credit. He submits that the goods in question was received and capital goods Cenvat credit was availed. There is no doubt at all by the department about receipt and use of the capital goods. Without making any independent examination of the whole chain of transactions the appellant was denied Cenvat credit. Learned Counsel further drew attention to the ground (c) at page 10 of appeal folder to establish purchase and use of the goods remaining undisputed.

2. Learned D.R. submits that the authorities examined the issue and disallowed the Cenvat credit.

3. Heard both sides and perused the record.

4. The dispute being on a very limited point there is no necessity to merely dispose the stay application but also appeal itself can be disposed since dispute is on narrow compass. Both sides agree to the same.

5. The appellate order does not reveal conduct of any independent inquiry by authority to deny the credit. Only reasoning of disallowance of Cenvat credit was that of non-production of original invoice. Tribunal has been holding that Cenvat credit in respect of B.S.N.L. (a public sector) may not be denied when receipt of goods and installation thereof does not remain in doubt. The present case is not pleaded by Revenue to be otherwise. Therefore, the appellant is entitled to the benefit of judgement of the Tribunal in the case of same B.S.N.L. made in the past. However, to grant opportunity to the Revenue to satisfy that there is no other claim by the appellant in respect of the same goods elsewhere and to avoid duplicacy of the claim in future elsewhere, the matter is required to be sent back on this limited ground. Also it is noticeable from the first Para of the appellate order indicating that no letter of the circle office was submitted to the Range office in respect of claim. Therefore, all the relevant documents should be verified by the

department from the record of BSNL and also test averments of the Appellant. It is reiterated that if the capital goods has arrived and was installed and no duplicate claim was made on the self same capital goods, the appellant should not be denied Cenvat credit since there is no finding of inadmissibility otherwise. In the result, both stay application and appeal are allowed.

6. The matter is remanded to the Adjudicating Authority on the aforesaid count.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK