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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. ST/1142/2011 – SM[BR] ST / STAY / 2393/ 2011-SM[BR] **Date 14/12/2011**

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

To :
BHARAT SANCHAR NIGAM LTD.
OFFICE OF GMTD, MEERUT CANTT, MEERUT (U.P.)
BHARAT SANCHAR NIGAM LTD. Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No. 873/2011-SM[BR]&S/840/2011** dated 30.11.2011 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. MEERUT I
EXCISE CHOWK,OPPOSITE
CHOUDHARY CHARAN SINGH
UNIVERSITY MANGAL PANDAY
NAGAR, MEERUT - 250005.
2. Adv. / Consult
MR.RISHI & ASSOCIATES
60-VILVESHWARPURI,BEHIND SADAR THANA, MEERUT CANTT, MEERUT.

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.II, R.K. PURAM, NEW DELHI-110066

COURT NO. II

ST/Stay No. 2393/2011 in
Service Tax appeal No. 1142/2011-SM

[Arising out of Order-in-Revision No. 07/Commr./Mrt-I/2011 dated 25.03.2011 passed by the Commissioner, Central Excise, Meerut].

Date of Hearing: 30th November, 2011

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s. Bharat Sanchar Nigam Ltd., Appellant

Vs.

CCE, Meerut-I Respondent

Present for the Appellant : Shri Anurag Rishi,Advocate
Present for the Respondent : Shri Fateh Singh, DR

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

FINAL ORDER NO. 873/2011 SM (BR) of
S-840/2011 SM (BR)

Per D.N. Panda:

Learned Counsel submits that against adjudication order dated 31.3.2009 there is a revisionary order passed on 25.3.2011 imposing penalty of Rs. 5,73,561/- under Section

78 of the Finance Act, 1994. The Revisionary Order does not sustain because the appellant has not made any suppression of the fact. BSNL is a public sector and only delayed compilation of accounts prevented the appellant to discharge the tax liability with interest. There was no mala fide intention to cause evasion. Considering the bona fide case of the appellant learned Adjudicating Authority invoked Section 80 of the Finance Act, 1994 and dropped the penalty. Therefore, not only pre-deposit may be waived but also appeal itself may be disposed.

2. Learned D.R. on the other hand, support the revisionary order.

3. Heard both sides and perused the record.

4. The revisionary authority imposed penalty under Section 78 on the ground that the party not only disclosed information but also not submitted anything in its defence despite repeated opportunities. The said authority discarding the finding of the adjudicating authority made under Section 80 of the Finance Act, 1994 and proceeded to penalize the appellant under Section 76 and 78 on the ground of willful contravention of law. Adjudicating authority in Para 4.10 has observed that the appellant, a public sector, has not followed any questionable modus operandi to cause evasion. To revert the finding of the Adjudicating Authority the appellate authority did not make any independent inquiry since no material borne by

record could be brought by him to establish his finding and conclusion.

5. In view of the aforesaid observations, dispensing with requirement of pre-deposit, appeal is allowed restoring the adjudication order dated 31.3.2009.

(Pronounced in the open Court)

(D.N.PANDA)
JUDICIAL MEMBER

RK