14

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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/532 /2011 - CU[DB]
ST/S/1016/2011

Date **26/12/2011**

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

To :
M/S BHARTI AIRTEL LTD. (FORMERLY M/S BHARTI
CELLULAR LTD.)
AIRTEL CENTRE, PLOT NO. 16, UDYOG VIHAR,
PHASE-IV, GURGAON (HARYANA)
122001

M/S BHARTI AIRTEL LTD. (FORMERLY M/S BHARTI CELLULAR LTD.) Appellant

Vs

C.S.T. DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/658/ 2011 CU[DB]** dated 20.12.2011 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/876/11

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.S.T. DELHI
17-B, I.P. ESTATE, IAEA HOUSE,
NEW DELHI.

2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
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 - 110005
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
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 08/12/2011.
DATE OF DECISION : 08/12/2011.

Service Tax Stay Application No. 1016 of 2011 in Appeal No. 532 of 2011

[Arising out of the Order-in-Appeal No. 17/S.Tax/D-II/2011 dated 10/01/2011 passed by The Commissioner of Central Excise (Appeals), Delhi – II.]

For Approval and signature :
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	No
2.	Whether it would be released under Rule 27 of the 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 Department Authorities?	:	Yes

M/s Bharti Airtel Ltd. — Appellants

Versus

CST, Delhi — Respondent

Appearance

Shri R. Madhav Rao, Advocate – for the Appellants.

Shri A. Jain, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

Stay order No ST/876/11

Final Order No. ST/658/11 Dated : 20/12/11

Per. Archana Wadhwa :-

After dismissing with the condition of pre-deposit of service tax of Rs. 48,27,678/- and penalty of identical amount confirmed against and imposed upon the applicant/appellant for the period April 1999 to March 2000, we proceed to decide the appeal itself with the consent of both the sides.

2. The appellants are engaged in providing the services under the category of tele-communication and are registered with the Service Tax Department. During the said period, service tax was being paid by the appellant after filing the due ST-3 Returns. However, they were issued a show cause notice on 2/7/04 alleging that as per the audit report, they have received an amount of Rs. 339 crores (approximately) as a consideration for the services provided by them, whereas they have paid the tax on 337 crores. Out of the said 337 crores reflected in their returns, the duty was actually paid on 330 crores, showing the 7 crores as recoverable from their clients. Learned advocate clarifies that during the relevant period their billed amount was Rs. 337 crores and they ~~released~~ realised amount was Rs. 330 crores, which was reflected in the ST-3 returns and duty was paid accordingly. The total billed amount of Rs. 337 crores was reflected in their balance sheet.

3. During the course of adjudication, the appellants contested the demand on the ground that the allegation of realisation of 339 crores as a service consideration is factually incorrect, as is clear from the figures reflected in their balance sheet. They also asked for the source of the above information and the allegation of excess realisation. The audit reports, to which the show cause notice referred to, was also never made available to the appellant.

4. It is seen from the impugned order passed by the original Adjudicating Authority that there is an observation to the effect that the assessee have not denied the fact of excess billing. The above observation of the Adjudicating Authority stands contested by the learned advocate by drawing our attention to his own observations made in the earlier paragraphs indicating that the appellant have seriously contested the above value of the taxable services as factually incorrect and have also asked for the source of the same. We further note that the Adjudicating Authority has not relied upon the appellants balance sheet and profit and loss amount by observing that the one produced before him stand marked as duplicate and the appellant has not produced the original balance sheet and profit and loss account. Learned advocate submits that a photocopy of the balance sheet was produced before the original Adjudicating Authority which he is referring to as "**duplicate**".

Similarly, by drawing our attention to the findings of the Appellate Authority that the balance sheet maintained by the appellant is full of confusion and chaos. The said finding is based on appreciation of the fact that the appellant have shown outstanding debtors for the period 1999-2000 as amounting to Rs. 2.51 crores approximately, whereas according to their own balance sheet, the same should have been to the tune of Rs. 7 crores approximately. Learned advocate demonstrate the above finding of fact as factually incorrect by referring to the balance sheet, wherein under the column Sundry Debtors, he picks up the only one figure of Rs. 2.51 crores, whereas there are the three entries, and if the total outstanding figure is taken note of, the same would come around 20 crores. As such, he submits that the Commissioner (Appeals) has himself misread the balance sheet.

5. After hearing the learned DR, who supports the impugned orders, we agree with the learned advocate that both the authorities below have not correctly examined the issue, by taking into account the balance sheet, profit and loss account and the other relevant documentary evidences. First of all, if the revenue is making an allegation to the effect that the appellant has realised service consideration to the tune of Rs. 339 crores, as against 337 crores reflected in balance sheet, it is for the revenue to establish the said fact while producing sufficient evidences on record. It is seem that even audit reports, on the basis of which allegations have been made, do not stand supply to the appellant. We are not aware as to whether the said audit report has disclosed the basis of realisation of the above alleged figure of 339 crores or not. The minimum, revenue could have

done was to supply a copy of the audit report to the appellant so as to enable them to meet with the allegations made therein. Apart from that, we note that examination and verification of the balance sheet and profit and loss account by the authorities below is not appropriate. As factual examination can be done only original stage level, we set aside the impugned order, remand the matter to the original Adjudicating Authority with directions to supply the basis of making the allegation of realisation of more amount for the services provided by them and to examine the documentary evidences on record produced by the appellant in support of their defence. We make it clear, while remanding the matter, we have not expressed any opinion on the merits of the case and the lower authorities are to re-adjudicate the same based upon the documentary evidences which are to be appreciated by them. Stay petition as also appeal get disposed of, in above manners.

(Dictated and pronounced in open court.)

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

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