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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/239 /2008 - CU[DB]   Date **05/09/2011**

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

To :
M/S BHARAT SANCHAR NIGAM LTD.

GENERAL MANAGER,TELECOM
DISTRICT,AMBEDKAR CHOWK, NEAR HIGH
COURT,JABALPUR (MP)

M/S BHARAT SANCHAR NIGAM LTD. Appellant

Vs

C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/406/ 2011 CU[DB]** dated 18.08.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E BHOPAL
HOSHANGABAD ROAD, 48,
ADMINISTRATIVE AREA, AREA
HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult
MR.KUMAR & ASSOCIATES, ADVOCATES
J&K 121,2ND FLOOR,LAXMI NAGAR, DELHI-110092

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.II

ST/Appeal No.239/2008

(Arising out of order in original No.6/Commr/ST/08 dated 15.1.08 passed by the Commissioner of Customs & Central Excise, Bhopal)

Date of Hearing: 26.7.2011

For Approval and signature:

Hon'ble Mr D.N. Panda, Member Judicial
Hon'ble Mr.Sahab Singh, Technical Member

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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 would 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 Department Authorities?

M/s Bharat Sanchar Nigam Ltd — Appellant

Vs

CCE, Bhopal — Respondent

Appeared for the Appellant : None
Appeared for the Respondent: Shri Sonal Bajaj, SDR

Coram: **Hon'ble Shri D.N. Panda, Member Judicial**
Hon'ble Shri Sahab Singh, Member Technical

Final ORDER No. 57/2006/11

Per D.N. Panda:

None present for the Appellant.

2. There was direction on 1.3.2011 for issue of notice to BSNL in view of their failure for appearance. Notice has gone. No application for adjournment is on record.

3. The learned DR states that when the appellant failed to provide proper documents in respect of claim of Cenvat credit on capital goods, that was disallowed by the authority below. He draws our attention to para 13 of the order where there is elaborate discussion relating to claim of the Appellant. He also states that there were three issues before the Original Authority. But the adjudication is limited to only one dispute as above.

4. Heard the learned DR and perused the records.

5. We have perused para 13.3.3 of the order wherein verificiation was done by the department about the genuineness of the claim of the assessee by letter No. RST/JBP/AGMP/2007/122 dated 7.1.2008 came from Central Excise Division, Jabalpur. The contents of the letter were examined by the authority. That shows that invoices were in the name of CAO, Telcom Circle, Bhopal while consignee is Telcom Circle, Jabalpur and Cenvat credit was passed on to the Telcom Circle, Jabalpur on the basis of debit notes. Once such observation is coming to record, the authorities should have asked for original documents for verification from Bhopal Circle.

Otherwise to save time, the Revenue authorities of Bhopal could have been referred for examination at their end.

6. We find that the adjudication has not resulted with a very serious dispute on the point of law but that has arisen on the point of fact which can be sorted out by cross verification of the documents, when BSNL is absent today. We declined to take a view against the BSNL since materials available on public records can be verified.

7. With the aforesaid observations, we send the matter back to the learned Original Authority to conduct enquiry at the end of Bhopal Circle and ask for production of the documents which gave rise to the debit note as in para 13.3.3. If the authority is satisfied that on the same invoice there is no further claim made by the BSNL other than the claim made by the Appellant, this appellant should not be denied the claim subject to satisfaction of the Authority. Bhopal Circle of BSNL has to satisfy the Authority that credit on capital goods has not been passed on to any other circles for multiple claims. De novo adjudication need be completed granting fair opportunity of hearing.

7. Thus we remand the matter to the original authority with the aforesaid observations. Appeal is disposed of in above terms.

(D.N. PANDA)
Judicial Member

MPS*

(SAHAB SINGH)
Member Technical