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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

Date **12/07/2011**

Appeal No. ST/238 /2008 - CU[DB]

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

To :
M/S TATA TELESERVICES LTD.

2A, OLD ISHWAR NAGAR,MAIN MATHURA
ROAD,NEW DELHI-110065.

Appellant

M/S TATA TELESERVICES LTD.

Vs

Respondent

C.S.T. DELHI

I am directed to transmit herewith a certified copy of **Final order No.ST/273/ 2011 CU[DB]** dated 30.06.11 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.S.T. DELHI
17-B, I.P. ESTATE, IAEA HOUSE,
NEW DELHI.

2. Adv. / Consult

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

COURT NO. II

Service Tax Appeal No. 238 of 2008

[Arising out of Order-in-Appeal No. 51/ST/DLH/2007 dated 08th January, 2008 passed by the Commissioner of Central Excise (Appeals), New Delhi].

Date of Hearing: 1st June, 2011

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member;
Hon'ble Shri Sahab Singh, Technical 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. Tata Tele Services Ltd., Appellant

Vs.

CST, Delhi Respondent

Present for the Appellant : Shri Punit Tyagi, Advocate
Present for the Respondent : Shri B.L. Soni, D.R.

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

FINAL ORDER NO. ST/273/11

Per D.N. Panda:

Learned Counsel submits that receivables were taxed although those were not received during the period April, 2003 to September, 2003. The appellant was thereby deprived of refund claimed. According to him there exists several documents to entertain claim of the appellant and it should not suffer by arbitrary taxation of receivable for the above period.

2. Learned D.R. on the other hand, submits that there shall be no hesitation to reexamine the claim of the appellant if the appellant proves billed amount, amount received against those bills during the impugned period and the amount became receivable at the end of the impugned period. If the received figures are verifiable from the record appellant's claim may be entertained subject to provisions of law.

3. We have seen the first appellate order. It appears that the authority proceeded under assumption and presumptions. Para 2 of the appellate order clearly brings out how the adjudicating authority acted. There should be no presumption of recovery of service tax by appellant charging from the customers since suspicion however grave may be shall not be substitute of proof. All the bills should be thoroughly examined to ascertain taxes if any collected and deposited to rule out arbitrary adjudication.

4. It was submitted by Appellant before the authority below while making claim (reference page 46 of appeal folder) that they appellant was prepared to offer inspection of its books of account to establish its claim, this suggests that

the appellant maintained proper books of account to buttress its claim. Upon examination of records, books of accounts, documents and evidence if the authority is satisfied that the appellant has really suffered due to levy of tax on receivable for the impugned period, adjudication should get modified accordingly.

5. In view of observation aforesaid, we remand the matter to the original authority who shall grant fair opportunity of hearing to the Appellant and pass a reasoned and speaking order.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(SAHAB SINGH)
TECHNICAL MEMBER

RK