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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 17/01/2011

Appeal No. ST/561 /2009 - CU[DB]
ST/S/2066/09

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

To :
M/S BHARTI AIRTEL LTD.
D-184, OKHLA INDUSTRIAL AREA, PHASE-I, NEW DELHI.

M/S BHARTI AIRTEL LTD. Appellant

Vs

C.S.T. DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/05/ **2011 CU[DB]** dated 27.12.10 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/15/11

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. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall.Above Star India Bazar.Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Date of Hearing: 27.12.2010
Date of decision: 27.12.2010

Service Tax Stay Appn. No. ST/S/2066/2009 in Service Tax Appeal No.ST/561/2009

[Arising out of Order-in-Original No.33/VKG/2009 dated 8.4.2009 passed by the Commissioner of Service Tax, New Delhi.]

Bharti Airtel ...Appellant

Vs.

CST, New Delhi ... Respondent

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

Coram: Hon'ble Mr.D.N.Panda, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

Final **ORDER NO.** ST/5/11 **DATED: 27.12.2010**
Stay order No. ST/15/11
PER: D.N.PANDA

Ld. Counsel Shri B.L.Narasimhan submits that on the previous occasion of hearing on 23.11.2009, the Bench has directed to verify the issue of connectivity services. In the meantime, there is a significant development of law for which the connectivity charges may not be charged to service tax. He also submits that merely because certain facts and figures appeared in the Trial Balance of the appellant, that shall not ipsofacto make the appellant liable to tax under Finance Act, 1994.

2. Against the aforesaid preliminary points raised, Revenue's concern is whether such a point can be raised at this stage.

3. Ld. DR also submits the report of the Commissionerate about the levy.

4. We have gone through the letter dated 24.12.09 of the Asstt. Commissioner, Service Tax Division, Gurgaon. That letter does not throw light about the liability aspect, nature there of, modality of determination of liability and the statutory provision which shall be applicable to the issue in question. Also we are not able to be satisfied whether Revenue shall be prejudiced, if this matter is remanded without keeping same pending here merely deciding the stay application when the matter needs a relook.

5. In view of the aforesaid, to protect interest of Revenue, it would be proper to dispense pre-deposit and send the matter back to the Original Authority to hear the appellant afresh on all the legal issues that may be open to the appellant to be argued as well as to produce factual evidence for appropriate adjudication of the matter. Accordingly, we dispense pre-deposit and remand the matter disposing both stay application and appeal to save time for appropriate adjudication.

6. Since the matter has involved Crores of rupees demand, it would be proper for the Original Authority to complete the fresh adjudication within three months of receipt of this order. However, we make it clear that by this time stipulation, the

appellant shall not be deprived of process of justice. Reasonable opportunity of hearing is to be given to the appellant and a reasoned and speaking order should be passed, considering entire development of law and factual evidence that shall come to record.

7. In the result, both stay application and appeal are disposed.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

Anita