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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/1623/2011 - CU[DB] Date **25/04/2012**
ST/M/905/11, ST/S/3413/11

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

To :
M/S BHARAT SANCHAR NIGAM LIMITED,

OFFICE OF THE TDM, JAISALMER (RAJASTHAN)

345001

M/S BHARAT SANCHAR NIGAM LIMITED, Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/345/ 2012 CU|DB|** dated 16.04.12 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/S/473/12 &
MISC ORDER NO ST/M/149/12

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.SAMEER AGRAWAL
B-138, SECTOR -30, NOIDA 201303

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-3
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.III

ST/Misc 905/11, ST/Stay 3413/11
ST/Appeal No.1623/2011

(Arising out of order in appeal No.150-151/CB/ST/JPR.II/2011 dated 25.2.11 passed by the Commissioner of Customs & Central Excise,(Appeals), Jaipru-II)

Date of Hearing: 16.4.2012

For Approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member Judicial
Hon'ble Mr.Mathew John, 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?	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 Bharat Sanchar Nigam Ltd — Appellant

Vs

CCE, Jaipur-II — Respondent

Appeared for the Appellant: Shri Sameer Agarwal, Advocate
Appeared for the Respondent: Shri Amresh Jain, DR

Coram: **Hon'ble Mrs. Archana Wadhwa, Member(Judicial)**
Hon'ble Shri Mathew John, Member (Technical)

Misc order No. ST/M/149/12-Cus
Final ORDER No. ST/A/345/12-Cus.
Per Archana Wadhwa: Stay order No. ST/S/478/12-Cus.

After dispensing with the condition of pre-deposit of service tax, we proceed to decide the appeal itself in as much as we find that the disputed issue requires factual verification.

2. Service tax stands confirmed against the appellant to the extent of Rs. 22,46,567/- for the period October, 2006 to September, 2007 on the ground that they had availed the entire 100% excise duty in the first year of receipt of capital goods instead of availing 50% of the credit in the first year and in respect of the balance 50% in the second financial year in terms of proviso of Rule 4(2)(a) of the Cenvat Credit Rules, 2004.

3. Learned Advocate appearing for the appellants draws our attention to a detailed chart produced on record submitting thereby that they had taken only 50% of the credit in the first year of receipt of capital goods. However, he fairly agrees that such plea was not raised before the lower authorities and the matter was agitated only on the legal issue ~~and~~ that the entire exercise was revenue neutral.

4. Now as much as the above plea stands taken before us for the first time, we deem it fit to set aside the impugned order and remand the matter for verification of facts. As such, the appeal is allowed by way of remand. Stay petition as also appeal gets disposed of in the above manner.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Member (Technical)
MPS*

(ARCHANA WADHWA)
Member (Judicial)