14

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : cestat08@gmail.com

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/2555/2010 - EX[DB] , E/M/639&883/2010 Date **15/02/2012**

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

To :
BHARAT SANCHAR NIGAM LIMITED,

GENERAL MANAGER (BSNL),
SHYAM NAGAR, SRI GANGANAGAR (RAJ.)
335001

BHARAT SANCHAR NIGAM LIMITED, Appellant

Vs

C.C.E. JAIPUR I **MISC ORDER NO. 126-127/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/124 2012 EX|DB|** dated 08-2-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR I
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
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 01.02.2012

For approval and signature:

Hon'ble 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.	
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?	

Excise Appeal No. 2555 of 2010 with
Excise Misc. Nos. 639 & 883 of 2010
(Arising out of order in original No. 12/2010 dated 12.05.2010 passed by the Commissioner, Central Excise, Jaipur)

M/s Bharat Sanchar Nigam Ltd. — Appellants

Vs.

CCE, Jaipur — Respondent

Appearance:

Rep. by Sh. Sameer Agrawal, Advocate for the appellants.
Rep. by Sh. S. R. Meena, DR for the respondent.

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

MISC ORDER NO. 126-127/2012-EX (BR)
FINAL ORDER NO. A/124/2012-EX (BR)

Per: Rakesh Kumar:

In this case vide stay order No. 535/2011-Ex dated 02.05.2011 direction had been given to the Commissioner to verify the correctness of the invoices on the basis of which the cenvat amounting to Rs. 1.11 crores have been taken by the appellant and pending this exercise status quo had been ordered. Today this matter is listed for further direction.

2. Heard both sides.

3. The necessary verification in terms of the order dated 02.05.2011 has been done by the Commissioner and verification report has been placed on record. According to the verification report all the documents on the basis of which cenvat credit under dispute, had been taken have been checked and verified with the original duty paying documents submitted by the party and only certain original invoices involving cenvat credit of Rs. 92445/- could not be produced by the appellant. However, the learned Counsel for the appellant pleads that even in respect of those documents also the original duty paying documents are now available and can be provided. In view of this, the matter has to go back to the Commissioner for decision on the basis of verification report after hearing the appellant.

4. The verification report also mentioned that cenvat credit of Rs. 2050607/- has been availed on the basis of Advise of Transfer for Debit (ATDs) issued by Central Telecom Store Depot (CTSD) which procures the material and passes on the cenvat credit to various units alongwith the material supplied. Learned Counsel for the appellant pleads that the issue as to whether the cenvat credit can be allowed on the basis of ATDs issued by

the CTSD stands decided in favour of the appellant by the decision of Tribunal in the case of **Bharat Sanchar Nigam Limited vs. Commissioner of C. Ex. Salem reported in 2009 (14) STR 699 (Tri. Chennai).** In view of this, the issue regarding cenvat credit of Rs. 20,50,607/- taken on the basis of ATDs has to be decided on the basis of the above judgement of the Tribunal on production of duty paying documents.

5. In view of the above discussion, the impugned order is set aside and the matter is remanded to the Commissioner for denovo adjudication following our earlier direction in this order and giving opportunity of personal hearing to the Appellant in course of which they can produce the documents in support of their claim for balance amount of cenvat credit.

(Dictated and pronounced in the open Court)

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

Pant