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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/41,292 /2006 - CU[DB] Date **13/03/2012**

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

To :
M/S BHARTI HEXACOM LTD
K-21, SUNNY HOUSE, MALVIYA MARG,
C-SCHEME, JAIPUR, RAJASTHAN

**M/S BHARTI HEXACOM LTD** Appellant
Vs
**C.C.E JAIPUR** Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/161-162 2012 CU[DB]** dated 02.03.2012 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 JAIPUR**
N.C.R BUILDING, STATUE CIRCLE,
C-SCHEME, JAIPUR (RAJ)
302005

2. Adv. / Consult MR. B.L. NARSIMAHAN,
B-6/10, SAFDARJUNG ENCL.,
NEW DELHI – 110 029.

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)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**
**Principal Bench, New Delhi**

**COURT NO. II**

**DATE OF HEARING : 24/02/12.**

**Service Tax Appeal Nos. 41 & 292 of 2006**

[Arising out of the Order-in-Appeal No. 427 (MPM)/CE/JPR-I/ 2005 dated 10/11/2005 passed by The Commissioner (Appeals-I), Customs & Central Excise, Jaipur. ]

and

[Arising out of the Order-in-Original No. 03-04/2006 dated 20/02/2006 passed by The Commissioner of Central Excise, Jaipur – I. ]

For Approval and signature :
**Hon'ble Shri D.N. Panda, Judicial Member**
**Hon'ble Shri Rakesh Kumar, 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 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 Bharti Hexacom Ltd. Appellant

Versus

CCE, Jaipur Respondent

**Appearance**

Shri B.L. Narsimhan, Advocate – for the appellant.

Shri B.L. Soni, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri D.N. Panda, Judicial Member**
**Hon'ble Sh. Rakesh Kumar, Technical Member**

Final Order No. ST/161-162/12 Dated : ____________

**Per. D.N. Panda :-**

Shri Narsimhan, learned Counsel in both the appeals says that causes of action in these two cases is common as to taxability of the SIM Card sale and services involved. The matter ultimately reached to Apex Court and that was resolved by judgment reported in **Idea Mobile Communication Ltd. vs. CCE, Cochin – 2011 (23) S.T.R. 433 (S.C.)**. Before the controversy was resolved by the Apex Court there were several confusions in the telecom sector for determination of liability under Finance Act, 1994. Conflicting decisions came from various forums. That could not enable the appellant to precisely work out its liability in both the appeals. Therefore, the matter reached to Tribunal for resolution. There was no suppression of the facts done to the authorities because of the doubt as to whether any service element was involved for activating the SIM Card. Learned Counsel also says that the appellant had discharged its tax liability as soon as it could work out its liability on a conceivable basis.

2. In appeal No. ST/41 of 2006, argument of learned Counsel is that show cause notice was issued on 24/07/2000 for the period 1997-1998 to 1999-2000. Fairly agreeing to the proposition of law settled by Apex Court, he says that service tax

liability may be confirmed without exposing the appellant to penalty in this appeal.

3. Considering above fair proposition of appellant and also looking to the journey the litigations have traveled to reach to the finality, it would not be proper to impose penalty for disputed question of law involved in the appeal. Accordingly, this appeal is allowed partly confirming the tax demand followed by interest to be payable as that shall be applicable during relevant time waiving the penalty imposed in adjudication.

4. So far as appeal No. ST/292 of 2006 is concerned, learned Counsel says that this appeal covers two show cause notices dated 1/12/2005 and 29/12/2005 making adjudication. The notice dated 1/12/05 comprised the period 1/4/2003 to 31/3/05 and the notice dated 29/12/05 comprised the period 1/4/05 to 31/09/05.

5. In so far as the show cause notice dated 1/12/05 is concerned, learned Counsel fairly states that liability in this case arises for the normal period comprising September 2004 to March 2005. Even in such a situation penalty may not be confirmed but the tax liability may be directed to be deposited with appropriate interest. Considering such a fair proposal and in view of the reasons stated aforesaid, we hold that the appellant shall be liable to discharge service tax demand for the normal period comprising September 2004 to March 2005 in respected undisputed category of taxable service provided as is held in

adjudication order for that period, at the appropriate rate followed by interest payable at the rate prevailing during the relevant period. There shall be no penalty for that period also.

6. So far as the show cause notice dated 29/12/05 is concerned, learned Counsel says that this notice comprises the period from 1/4/05 to 30/09/05. For this period, the appellant shall deposit the service tax liability with interest following the Apex Court decision. However, the penalty may be waived. For the reasons aforesaid, we also direct that service tax for the undisputed category of service provided in the adjudication shall be realized from the appellant for the period covered by the show cause notice dated 29/12/2005 followed by interest at appropriate rate. There shall also be waiver of penalties in this case. In the result, both appeals are allowed granting relief to the extent indicated against each appeal as stated above.

(Dictated and pronounced in open court.)

**(D.N. Panda)**
**Judicial Member**

**(Rakesh Kumar)**
**Technical Member**

PK