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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
EXCISE APPEAL BRANCH

Appeal No. : E/218/2005-EX[DB]

Dated: **17/10/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
VINDHYA TELELINKS LIMITED
Udhyog vihar, P.O Chorhata , rewa (MP)

VINDHYA TELELINKS LIMITED (Appellant)

VS

C.C.E GWALIOR (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/1222/2012-EX[DB]** dated **11/10/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944**.

17/10/12

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
C.C.E GWALIOR
19/1265, CITY CENTRE, OPP.
TOUCHTEL , GWALIOR (M.P)

2. Advocate(s) / Consultant(s): SH. S. SUNIL, ADV, c/c
Khaitan & Khaitan
D-41, Defence Colony,
New Delhi
Delhi
110024

3. C.D.R
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

13. Office Copy

14. Gaurd File

17/5/12

Assistant Registrar
EXCISE Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 11.10.2012

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. 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. 218 of 2005
(Arising out of order-in-appeal No. GWL/700/2004 dated 30.11.2004 passed by the Commissioner (Appeals) Customs & Central Excise, Gwalior).

M/s Vindhya Telelinks Ltd. Appellants

Vs.

CCE, Gwalior Respondent

Present Sh. S. Sunil, Advocate for the appellants.
Present Sh. R. K. Verma, AR for the respondent.

Coram: Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Sh. Rakesh Kumar, Member (Technical)

FINAL ORDER NO. A/1221/2012-B-E (BL)

Per: Justice Ajit Bharihoke:

This appeal is directed against the impugned order in appeal dated 30.11.2004 whereby the Commissioner (Appeals) dismissed the appeal filed by the appellant

2. Sole ground on which the refund is sought is that the appellant vide relevant invoices had supplied cables to BSNL at a given rate on which the excise duty was paid. However, BSNL made less payment to the appellant claiming that rates quoted were in respect of "long length cable" whereas the cable supplied was "short length cable". Thus, according to the appellant he has paid excise duty at a higher rate then the price received by him and as such he is entitled to refund of differential in excise duty calculated on the basis of the rate mentioned in the invoices and the rate of payment was received by him.

3. Sh. S. Sunil, Advocate has contended that the impugned order rejecting the claim is not sustainable because the jurisdictional Deputy Commissioner as well as Commissioner (Appeals) have failed to appreciate that higher excise duty was paid by the appellant on as per the rate mentioned in the invoices whereas the appellant had received the lesser amount against price of the goods supplied.

4. Shri R.K. Verma, ld. D.R. for the Revenue to argue in favour of the impugned order. He pleaded that Commissioner (Appeals) have rightly rejected the appeal as the appellant failed to lead any evidence to support his claim.

5. We have considered the rival submissions. Since the appellant is seeking refund of excess excise duty paid, the onus of proving the excise duty was actually paid in excess due to mistake is on the appellant. Ld. Counsel for the appellant has failed to point out any evidence to substantiate his plea that the goods supplied through the relevant invoices were wrongly described as "long length cables" instead of "short length cables". Merely because BSNL has made less payment, the claim for refund cannot be justified, because the levy of excise duty is based upon the transaction value at the time of clearance and not on the payment made

by the purchasers. Thus in absence of any evidence on record , we do not find any justification in the claim of refund or reason to interfere with the order of Commissioner (Appeals) rejecting the refund.

6. Appeal is dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant