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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/STAY/3365/2009 IN ST/1017/2009 - CU[DB] Date **03/02/2012**

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

To :
M/S. BHARAT SANCHAR NIGAM LTD.
TELECOM DISTT. MANAGER, ZILA PANCHAYAT
BHAWAN, RAMPUR (U.P.)

M/S. BHARAT SANCHAR NIGAM LTD. Appellant

Vs

C.C.E. MEERUT II **STAY ORDER NO.ST/S/91/2012** Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/88/ 2012 CU[DB]** dated 31.01.2012 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. MEERUT II
OPP. SAHEED PARK (NEAR
ASHOK KI LAT) DELHI ROAD,
MEERUT (UP)

2. Adv. / Consult
MR.RAM PRASAD, ADVOCATE
96-A-D4, L.I.G.FLAT, SECTOR-82,
NOIDA (GAUTAM BUDH NAGAR (U.P.)

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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:26.12.2011
Date of decision:26.12.2011

Service Tax Stay Application No.3365 of 2009 in
Service Tax Appeal No.1017 of 2009

[Arising out of Order-in-Original No.18-Commr./M-II/2009 dated 28.08.2009 passed by the Commissioner of Central Excise & Customs, Meerut-II].

M/s.Bharat Sanchar Nigam Ltd. Appellant

Vs.

CCE, Meerut-II Respondent

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see 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?

Appearance: Rep. by Shri Ram Prasad, Advocate for the appellant.
Rep. by Shri Rajindra Gupta, DR for the respondent.

CORAM: Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No ST/A/88/12-Cus./Dated:26.12.2011
Stay order No ST/S/91/12-Cus.

Per Rakesh Kumar:

In this case, according to the department, during the period from June, 2003 to Feb., 2004, BSNL, had short paid service tax amounting to Rs.75,48,872/-. On this basis, after issue of show cause notice, the jurisdictional Commissioner vide Order-in-Original dated 28.8.2009 confirmed service tax demand of Rs.75,46,872/- against the appellant along with interest and also imposed penalties under Sections 76, 77 and 78 of the Finance Act. Against this order of the Commissioner, the present appeal has been filed.

2. Heard both the sides.

3. Shri Ram Prasad, Advocate, ld. Counsel for the appellant, pleaded that there is no short payment of service tax, that the amount which has been demanded, had been paid by BSNL when it was part of the Department of Telecommunication and that they are in a position to show the documents in support of this. He also pointed out that earlier, the Bench has also passed a Misc. Order No.ST/109/11 dated 10.06.2011 asking them to approach the jurisdictional Commissioner with the records for re-conciliation

4. Ld. Sr. Departmental Representative states that sofar ~~as~~ the reconciliation exercise has not been completed.

5. Since, in this case, the re-conciliation has to be done at the commissionerate level, there is no point in keeping this appeal pending. We, therefore, deem this matter fit for remanding to the Commissioner for de novo adjudication after reconciliation. Accordingly, the impugned order is set aside and the matter is remanded to the Commissioner for de novo adjudication after considering the appellant's plea that the entire service tax amount, which had been demanded, had already paid by BSNL or by the Department of Telecommunication. The stay application as also appeal stands disposed of.

[order dictated & pronounced in open court]

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

Ckp.