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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/125 /2006-127 /2006 - CU[DB] Date **14/03/2012**

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

To :
M/S BHARAT SANCHAR NAGAR LTD

B.S.N.L.PATIALA PUNJAB

M/S BHARAT SANCHAR NAGAR LTD Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/183-185 2012 CU[DB]** dated 21.02.2012 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. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017

2. Adv. / Consult
MR.G.C.BABBAR
A-2474, SECTOR-19/C,
CHANDIGARH

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,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066

COURT NO. II

Service Tax appeal No. 125-27/2006

[Arising out of Order-in-Original No. 2-4/CE/06 dated 18.1.2006 passed by the Commissioner of Central Excise, Chandigarh].

Date of Hearing/decision: 21st February, 2012

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 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?	

Bharat Sanchar Nigam Ltd., Appellant

Versus

CCE, Chandigarh Respondent

Present for the Appellant : Shri Sameer Agarwal, Adv.
Present for the respondents : Shri K.K. Jaiswal, D.R.

Coram: Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Rakesh Kumar, Technical Member

FINAL ORDER NO. ST/A/183-185/12-Cus.

Per D.N. Panda:

Learned Counsel Shri Sameer Agarwal says that there was no malafide on the part of BSNL to invite penal consequences of law under Section 76 of the Finance Act, 1994. So also section

76 was subject to provisions of section 80 of the said Act for no levy of penalty in the presence of reasonable cause. The cause that leads for deficiency for payment was that proper reconciliation could not be made during the period and also rate of taxation caused confusion. So also the appellant was not able to precisely work out its liability. There is no defiance to law nor there is any deliberate breach of law. Therefore, levy of penalty of Rs. 1,15,59,971/- may be waived in the interest of justice.

2. Learned Representative for Revenue on the other hand, says that BSNL got permission to appeal against penalty levied for which not only service tax demand is to be confirmed but also penalty should be upheld.

3. Heard both sides and perused the record.

4. We have perused the minutes of meeting of Committee of Dispute which is dated 26.2.2007 and available at page 17 of the appeal folder. The Committee vide Srl. No. 12 to 14 of the minutes conveyed its decision that BSNL can appeal in respect of penalty aspect only. This clearly leads to conclusion that service tax demand should be confirmed. We hold so.

5. When service tax demand is confirmed as above, interest becomes payable under law as required by the provisions prevailing at the relevant point of time. Such figure is to be computed and appropriate demand notice be issued.

6. So far as penalty is concerned it appears from the minutes of Committee on Dispute that there was no willful suppression or

mis-statement of facts on the part of BSNL. We are able to appreciate such fact from the adjudication itself which had not brought out the mens–rea aspect. In absence of any suppression or willful mis-statement of fact levy of penalty is unwarranted under law. So also we appreciate from Para 13 of the impugned order that they did not have proper software to work out their liability which could not be appreciated by the Adjudicating Authority. It is quite possible in an establishment like BSNL where huge receipts are made from telephone subscribers, ~~that~~ working out liability under Finance Act, 1994 manually may be practically difficult. Therefore, plea of the appellant that absence of proper software has trapped the appellant to litigation is a cause which requires reasonable consideration. Taking into consideration the above peculiar aspect there shall be waiver of penalty of Rs. 1,15,59,971/- imposed under section 76 of the Finance Act, 1994.

7. Appeal is partly allowed confirming service tax and interest and waiving the penalty to the extent indicated above. Above order is applicable to appeal No. ST/125 to 127/2006 only.

(Pronounced in the open Court)

(D.N.PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RK