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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/1934/2011 IN ST/925 /2011 - CU[DB] Date **16/03/2012**

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

To :
M/S MAHANAGAR TELEPHONE NIGAM LTD
DY GENERAL MANAGER (TRA),TRG STATION,
I FLOOR, TELEPHONE HOUSE, PRABHA DEVI,
DADAR(W), MUMBAI.

M/S MAHANAGAR TELEPHONE NIGAM LTD Appellant

Vs

C.S.T. DELHI **STAY ORDER NO.ST/S/240/2012** Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/189/ 2012 CU[DB]** dated 08.02.2012 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.S.T. DELHI
17-B, I.P. ESTATE, IAEA HOUSE,
NEW DELHI.

2. Adv. / Consult
MR.RAJIV TYAGI & ASSOCIATES
L-29 KAILSAH COLONY,
NEW DELHI – 110 048

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.
BENCH-DB

Service Tax Stay Application No.ST/S/1934/2011
Service Tax Appeal No.ST/925/2011

M/s.Mahanagar Telephone Nigam Ltd. ...Appellant

Vs.

CST, Delhi ... Respondent

Present for the Appellant : Shri Ajay Kumar, Proxy Counsel
Present for the Respondent:Shri.K.K. Jaiswal, SDR

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

Date of Hearing/Decision: 08.02.2012

Stay order No ST/S/240/12-Cus.
Final **ORDER NO.** ST/A/189/12-Cus. **DATED:** __________

PER: D.N.PANDA

Shri Ajay Kumar, Ld. Counsel mentions that the engaged Advocate Shri Rajiv Tyagi is sick for which he could not appear.

2. We took help of ld. Representative for Revenue to understand the grievance of the appellant. Shri Jaiswal Representative for Revenue mentions that the order brings out demand on two counts as depicted in the adjudication order as follows:-

i) *The party had not submitted return in the prescribed format as per the provisions of sub rule (4) of Rule 5 of the Service Tax Credit Rules, 2002 for the proper scrutiny/ quantification of the serive tax credit of Rs.62,61.059/- availed by them during the period from April 2004 to September 2004.*

ii) *The party has adjusted the short payments pertaining to July 2004 under Rule 6(3) against excess payment made of Rs.37,89,237/- made in* the first half of year ending September, 2004.

3. Submission of Revenue is that the appellant failed to file the return and also bring out the case for claiming the credit under Service Tax Rule 2002. Therefore, they were made liable to tax by the adjudication order.

4. We looked into the difficulty at both end for reconciliation of facts and figures because of the movement of the paper from one corner to other as has been described by the adjudicating authority. In view of the above, keeping the appeal pending before Tribunal shall serve no useful purpose for which we remand back the matter to ld. Adjudicating authority to grant fair opportunity to the appellant to adduce their evidence and lead their defence with appropriate pleading if any during the course of re-adjudication.

5. We make it clear to the appellant that it should not take adjournment when the matter is fixed for hearing which shall be done within one month of receipt of this order. The appellant at its own interest shall come forward to reconcile the facts and figures before adjudicating authority within 3 months of the fixation of hearing. There after ld. Authorities shall pass appropriate order. When we ordered remand by the above paragraph, we dispense requirement of pre-deposit. Consequently both stay application and appeal are disposed.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

Anita