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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/1741/2011-1742/2011 - CU[DB] Date **12/06/2012**
ST/S/3656-57/11, ST/M/440/11

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

To :
M/S BHARAT SANCHAR NIGAM LIMITED,
DEWAS GATE, UJJAIN (M.P.)

M/S BHARAT SANCHAR NIGAM LIMITED, Appellant

Vs

C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/461-62/ 2012 CU[DB]** dated 08/06/12 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Alongwith Stay Order No ST/S/668-69/12 & Misc Order No ST/M/219/12

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult Mr. Sidharth Sen
c/o Appellant

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)

M/S BHARAT SANCHAR NIGAM LIMITED,
DEWAS GATE, UJJAIN (M.P.)

CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO. III

ST/Stay/3656 -3657 / 2011 in Appeal ST / 1741-1742 / 2011

Date of Hearing : **08/06/2012**

[Arising out of Order-in-Appeal No. IND/CEX/000/APP/225 & 226/11 dated 10.6.2011 passed by the Commissioner (Appeals) Customs & Central Excise and Service Tax, Indore]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, 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?	:	No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3. Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

BHARAT SANCHAR NIGAM LIMITED, Applicant

Vs

C.C.E. INDORE Respondent

Appellant Advocate:
Sidhartha Sen, Advocate

Respondent Advocate:
K.P.Singh, Addl. Commissioner

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Final **ORAL ORDER NO.** ST/A/461-462/12-Cus.
Stay order No. ST/S/668-669/12-Cus

Per Archana Wadhwa (for the Bench):

Both the stay petitions are being disposed of by a common order as identical issue is involved. Demand of Service Tax of Rs.57,250/- and Rs.4,79,016/- stands confirmed against the appellant along with imposition of penalties under various sections on the ground that the rate of Service Tax required to be applied for the purpose of computation is the rate applicable on the date of receipt of consideration for the said service. On the other hand, it is the appellants contention that the services having been rendered prior to the date of increase in the rate of Service Tax, the previous rates would be applicable. At this prima facie stage, we find that the issue stand decided by various decisions of the Tribunal. One such reference can be made to Tribunal's decision in the case of Reliance Industries Ltd. [2008 (13) STR 164 (CESTAT-Ahmd)], which decision has followed the precedent decision of the Tribunal in the case of 1) Lumax Samlip Indsutreis vs. CST, Chennai [2007 (6) STR 417 (Tri-Chennai)], 2) CCE Noida vs. Matsushita TA & Audio India Ltd [2006 (1) STR 162 (Tri-Del)]; and 3) Art Leasing Ltd. vs. CCE, Cochin [2007 (8) STR 162 (Tri-Bang)]. We also note that the said decision of the Tribunal in the case of Reliance Industries was confirmed by Gujarat High Court when the appeal filed by the Revenue was rejected as reported in [2010 (19) STR 807-Ahmd].

2. By following the ratio of the above decision, we allow both the stay petitions unconditionally.

3. Inasmuch as the issue stand finally decided by the above referred decision of the Tribunal, as confirmed by Hon'ble High Court, we set aside the impugned order and allow the appeal itself with consequential relief to the appellants.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

ss

CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.

ST/COD / 440 / 2011 in Appeal ST / 1742 / 2011

Date of Hearing : **08/06/2012**

BHARAT SANCHAR NIGAM LIMITED, Applicant

Vs

C.C.E. INDORE Respondent

Appellant Advocate:
Sidhartha Sen, Advocate

Respondent Advocate:
K.P.Singh, Addl. Commissioner

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Misc **ORAL ORDER NO.** ST/M/219/12-CUS

Per Archana Wadhwa (for the Bench):

The delay in filing the present appeal is around 56 days. It is seen that one common ~~[illegible]~~ order-in-appeal was passed by Commissioner (appeals) and the appellant preferred only one appeal against the same. On being pointed out by the Registry, they filed the second appeal with delay of 56 days.

2. Inasmuch as the first appeal was filed well within time, we condone the delay in filing the supplementary appeal.

3. COD application is allowed in the above manner.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

ss