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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/22/2012-CU[DB],ST/S/68/12

Dated: **15/06/2012**

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

BHARAT SANCHAR NIGAM LTD.
ACCOUNTS OFFICER (CASH)
JANPAD, GORAKHPUR. (U.P.)

BHARAT SANCHAR NIGAM LTD. (Appellant)

VS

C.C.E Allahabad (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/467/2012-CU[DB]** dated **11/06/2012** and Stay/MISC Order No. and **ST/SO/682/2012** passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

Assistant Registrar
CUSTOMS Appeal Branch

Copy To,
1. Respondent
C.C.E Allahabad
38,M.G.Marg, civil Lines, Allahabad

2. Advocate(s) / Consultant(s):
VINEET KUMAR SINGH,A.C.A
5 NARAIN NAGAR, SECTOR
11,INDIRA NAGAR, LUCKNOW.

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. Office Copy

13. Gaurd File

Assistant Registrar
CUSTOMS Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

ST/Stay No.68/2012, ST/Appeal No.22/2012

(Arising out of order in appeal No.ST/69/2010/43 of 2011 dated 30.9.2011 passed by the Commissioner of Customs & Central Excise (Appeals), Allahabad)

Date of Hearing: 11.6.2012

For Approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member Judicial
Hon'ble Mr.Mathew John, 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?	No
2.	Whether it would 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 Department Authorities?	Yes

M/s BSNL — Applicants

Vs

CCE, Allahabad — Respondent

Appeared for the Appellant: Shri Vineet Kumar Singh, C.A.
Appeared for the Respondent: Shri Sumit Kumar, DR

Coram: **Hon'ble Mrs. Archana Wadhwa, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical)

Final ORDER No. ST/A/467/12-Cus.
Stay order No. ST/S/682/12-Cus

Per Archana Wadhwa:

After dispensing with the condition of pre-deposit, we proceed to decide the appeal itself with the consent of both the sides in as much as the disputed issue involves factual verification of documents which can only be done at the original level.

2. Cenvat credit stands denied to the appellant on the ground that the same has been availed on the basis of Advice for Transfer of Debit and Credit (ATDC) Certificate. The contention is that original records were lying in their head office and same ~~were~~ could not be produced before the original authority.

3. On going through the order, we find that adjudicating authority has observed as under:-

"These are only examples. In all, I tried at my level to co-relate the credit entries with the documents filed by the party claiming that the credits have been taken on the basis of proper documents. Although there are documents indicating payment of central excise duty or the service tax as the case may be, but none of these documents could be co-related with the credit entries. The party has filed these documents without providing any co-relation with the credit entries. No effort has been made by the party to spell as to how these documents relates to the credit taken by them and in particular to support that the credits were taken on the basis of these documents. The party has not even made any effort to tabulate these documents and then to co-relate with the credit entries.

4. We find some merit in the observations. It is the appellant who has availed the credit. It is their duty to show that such availment was correct. Mere production of huge central excise invoices, without there being co-relation with the ATDC, the appellant cannot expect the office of the Commissioner to undertake the job which is meant for the appellant. As the onus is upon the appellant to co-relate the documents and provide clea~~n~~r figures to the Commissioner, we direct the appellant to do so within a period of two months from today. It is

made clear that if the appellant do not undertake the above exercise, the adjudicating authority is free to pass appropriate order on the basis of record already available. The stay petition as also the appeal get disposed of in the above manner.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Member (Technical)
MPS*

(ARCHANA WADHWA)
Member (Judicial)