TELEGRAM : CEGCANAL
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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

STAY Application No. : ST/Stay/3514/2011
MISC Application No. : ST/MISC/941/2011
Appeal No. : ST/1690/2011-CU[DB]

Dated: **03/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
BHARAT SANCHAR NIGAM LIMITED
Office of GMTD, Jhunjhunu(Rajasthan)

BHARAT SANCHAR NIGAM LIMITED (Appellant)

VS

C.C.E. JAIPUR II (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/495/2012-CU[DB]**, Stay/MISC Order No. **ST/MO/258/2012** and **ST/SO/751/2012** dated **25/06/2012** 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. JAIPUR II
N.C.R.Building, Statue Circle, "C"
Scheme, Jaipur 302005.

2. Advocate(s) / Consultant(s):
SAMEER AGRAWAL
B-138, SECTOR -30, NOIDA 201303

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)
Custom Branch

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

Date of Hearing : **25/06/2012**

ST/MISC / 941 / 2011, ST/STAY/3514/2011 AND Appeal ST / 1690 / 2011

(Arising out of Order-in-Appeal No. 178(DKV)ST/JPR-I/2011 dated 28.4.2011 passed by the Commissioner (Appeals), Central Excise, Jaipur-I)

For Approval & signature :

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporter 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 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

BHARAT SANCHAR NIGAM LIMITED Applicant

Vs

C.C.E. JAIPUR II Respondent

Appellant Advocate:
SHRI SAMEER AGRAWAL, ADVOCATE

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

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

Misc order No. ST/M/258/12-Cus

Final Order No. ST/A/495/12-Cus..dated............

Stay order No. ST/S/751/12-Cus.

Per Archana Wadhwa:

After dispensing with the condition of pre-deposit of duty of Rs.6,02,902/- and penalty of identical amount, we proceed to decide the appeal itself inasmuch as the issue lies in a narrow compass.

2. After hearing both the sides, we find that the proceedings were initiated against the applicant/appellant for reversal of Cenvat credit availed on the basis of Advise Transfer Debit (ATD). The same were confirmed by the lower authority. On appeal against the above order of the original adjudicating authority, Commissioner (Appeals) set aside a major part of the demand by following the precedent decision of the Tribunal in the same appellant's case holding that credit availed on the basis of ATD is admissible. However, ~~we~~ he confirmed a part of demand on the ground that the appellant has not been able to produce any documents for claiming the benefit, as reported by the adjudicating authority.

3. The appellant's contention is that even for the remaining amount, ~~of~~ all ATDs were available which were also placed before the appellate authority. However, some~~or~~how he ~~other~~ missed the same and has not ~~been~~ taken cognizance of the said documents.

4. Inasmuch as it is the appellant's claim that they have the relevant ATDs for availing the credit, and as the issue requires verification of such documents, we set aside the impugned order

and remand the matter to the Additional Commissioner. The adjudicating authority would verify the documents and would decide the dispute accordingly.

5. Stay petition as also appeal get disposed of as indicated above.

6. Misc. application for staying the recovery of the impugned due also get disposed of.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM