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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/133/2004-CU[DB], ST/S/3278/04
ST/118/04, ST/2856/04

Dated: **20/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
C.C.E. JALLANDHAR(Hq. at
Chandigarh)
C.R.Building, Plot No. 19, Sector 17-C,
Chandigarh.

C.C.E. JALLANDHAR(Hq. at Chandigarh) (Appellant)

VS

GENERAL MANAGER TELECOM (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/533-534/2012-CU[DB]**, Stay/MISC Order No. and **ST/SO/823-824/2012** dated **27/06/2012** 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
GENERAL MANAGER TELECOM
JALANDHAR (PB)

2. Advocate(s) / Consultant(s):
MR. G.C. BABBAR AND ANISH
BABBAR (ADV.)
KOTI NO. 2474-A, SECTOR 19-C,
CHANDIGARH 160019

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

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : 27.6.2012

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?	Yes
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?	No

Service Tax Stay No. 3278 of 2004 and Service Tax Appeal No. 133 of 2004

[Arising out of the Order-in-Appeal No. 285/CE/JAL/2004 dated 30.6.2004 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh)

CCE, Jalandhar — Appellant

Vs.

M/s General Manager, Telecom — Respondent

Service Tax Stay No. 2856 of 2004 and Service Tax Appeal No. 118 of 2004

(Arising out of Order-in-Appeal No. 243/CE/Jal/2004 dated 27.5.2004 passed by the Commissioner (Appeals), Central Excise, Jalandhar)

CCE, Jalandhar — Appellant

Vs.

M/s General Manager, Telecommunication — Respondent

Appearance:

Appeared for Appellant : Shri B.L. Soni, A.R.

Appeared for Respondent : Shri G.C. Babbar, Advocate

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

Final Order No. S.T/A/S33-S34/12-Cus dated............
Stay order No. ST/S/823-824/12-Cus.

Per Mathew John :

In this appeal filed by Revenue, the dispute involved is the short payment of service tax and delay in payment of service tax on the part of the respondent in collecting and remitting service tax for the period 07/94 to 09/96. As per the adjudication order the service tax amount involved is Rs. 74,693/-. The interest demanded is Rs. 59,774/- plus Rs.39,44,635/-. Further there were penalties imposed under section 76, 77 and 79 of Finance Act 1994. Commissioner (Appeal) set aside the order of the adjudicating authority on the ground that the assessments were provisional and there were excess payments by the respondent for the subsequent period which had not been finalized. He also held that since the appellant was a Department of Government of India (GOI) during the relevant period interest and penalties are not maintainable. Aggrieved by the order of Commissioner (Appeal), Revenue has filed this appeal along with a request to stay the operation of the order of Commissioner (Appeal).

2. The Ld AR for Revenue submits that during the period 07/94 to 09/96 the respondent had not asked for any provisional assessment and they asked for provisional assessment only for the period 01/97 to 03/99 ~~only~~ and in this matter of provisional assessment the finding of the Commissioner (Appeal) is wrong. Revenue argues that during the period in question there was a short payment of service tax amounting to Rs. 74,693/-. Revenue

argues that the provisions of the Act is applicable equally to a Department of GOI as it would apply for any other party and hence interest and penalties are payable.

3. The respondents submit that the dispute relates to the initial period when service tax was imposed for the first time. Service tax was to be paid as and when payments of bills were received and not as and when bills were issued. Since telephone bills were paid by customers through many post offices, there was difficulty in collating information as to the exact amount of service tax to be paid for each period. They claim that the payments of tax and assessments were provisional. They claim that they had made one excess payment of Rs.9,851/- during the impugned period and another excess payment of Rs.3,31,193/- during the period 10/96 to 03/99. Revenue has made demands for tax without finalizing the provisional assessments. The respondent submits that there is no further tax amount to be paid by the respondent for the period 07/94 to 03/99.

4. They also argue that during the relevant period the respondent was working as a Department of the GOI and the delay was only in transferring money from one account of GOI to another and there is no case for demanding interest for such delay. The Counsel relies on the decision of the Tribunal in **Bharat Sanchar Nigam Ltd. Vs CCE, Bangalore** - 2005 (186) E.L.T. 340 (Tri. - Bang.) as affirmed by Karnataka High Court as reported at- 2010 (20) S.T.R. 762 (Kar.) in support of his argument.

5. In the matter of penalties the respondent submits there was no case to impose penalty on them because they were a department of the GOI. Further the very fact that the service tax levy was in its nascent stage and the respondents had to follow the instructions of GOI in matters relating to collection of Bills and transfer of money from one Government account to another there is every reason to invoke provisions of section 80 of the Finance Act, 1994 and waive penalties imposed on the respondent.

6. We have considered arguments on both sides. We note that Revenue is keeping quiet about the excess payments as claimed by the respondent. So we presume that there are such excess payments. The strict procedure of applying for provisional assessments or refund may not be applied in this case considering the facts that this was initial period of service tax levy and procedures had to evolve and settle. For the period for which assessment are admittedly provisional, Revenue has not finalized such assessments. The impugned service tax was always collected along with the bill amount and the money was always lying in the account of GOI. The Respondent, as a Department of GOI during the relevant period, was constrained in its method of collection of bills including service tax and adjustment thereof from one account of the GOI to the account of GOI for receiving service tax due to instructions issued by GOI. The amounts paid by customers inclusive of service tax were always in Government account and this is a matter of just adjustment of money from one account of GOI to another account of GOI. The short payment of tax for the disputed period is also very small. Considering such facts and

circumstances and the fact that revenue is keeping quiet about the excess payment of tax deposited by the respondent for subsequent period, during which assessment was admittedly provisional we find that there is no tax due from the respondent in the impugned matter.

7. We also note that it is already decided by Karnataka High Court that there is no need to collect any interest in the case of delay in deposit of service tax by Department of Post. Further we find this case to be a fit case for waiving penalty invoking the provisions of section 80 of the Finance Act, 1994.

8. Thus we reject the stay petitions and Appeals filed by Revenue.

(Pronounced in Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM