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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/1347/2012
MISC Application No. : ST/MISC/2507/2012, ST/MISC/487/2012
Appeal No. : ST/558/2012-CU[DB]

Dated: **10/09/2012**

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

Bharat Sanchar Nigam Ltd
Gmtd, Bsnl, O/o General Manager
Telecom, Sher Shah Wali Chowk, Near
Head Post Office, Ferozepur Cantt,
Punjab

Bharat Sanchar Nigam Ltd (Appellant)

VS

C.C.E. & S.T.-Chandigarh-ii (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/570/2012-CU[DB]**, Stay/MISC Order No. **ST/SO/923/2012** and **ST/MO/318-319/2012** dated **24/08/2012** 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. & S.T.-Chandigarh-ii
PLOT NO.19... CENTRAL REVENUE
BUILDING......SECTOR 17-C,
CHANDIGARH,160017
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. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

13. Office Copy

14. Gaurd File

Assistant Registrar
CUSTOMS Appeal Branch

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

ST/Misc/487 & 2507/2012
ST/S/1347/2012
ST/Appeal No. 558/2012

(Arising out of order in original No. 25/ST/CHD-II/2012, dated 05.01.2012
Commissioner of Customs & Central Excise, Chandigarh)

Date of Hearing: 24.08.2012

For approval and signature:

Hon'ble Mrs. Archna 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?	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 lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

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M/s B.S.N.L. Appellant

Vs

CCE, Chandigarh Respondent

Appeared for the Appellant: Shri, Sameer Agarwal,
Appeared for the Respondent: Shri, V.P. Batra,

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

Misc order No. ST/M/318-319/12-Cus
Stay ORDER No. ST/S/923/12-Cus
Final order No. ST/A/570/12-Cus

Per Mathew John:

In this proceeding two miscellaneous applications and stay petition along with appeal filed by B.S.N.L. are under consideration. Miscellaneous application No. 2507/2012 is for raising certain additional legal grounds. We have considered it and find it proper to allow the application in the interest of justice. Accordingly the said miscellaneous application is allowed. The second miscellaneous application No. 487/ 2012, is for waiver of pre-deposit of dues arising from the impugned order.

2. In this matter after adjudication and First Appeal the dispute that remains is about excess utilization of cenvat credit, contravening Rule 6 (3) (c) of Cenvat Credit Rule 2004, for the month of March 2008, amounting to Rs. 20,83,400. The counsel for appellant submits the rule 6 (3) (c) putting restriction that cenvat credit could be utilized only to the extent of 20% of tax liability has been withdrawn with the effect from 1.4.2008. Therefore, if excess ~~canvat~~ cenvat credit utilized during the month of March 2008 is paid in cash, equivalent amount of credit would become available for utilization for payment of tax during April 2008, and they could have utilized the entire credit during April 2008. Thus the payment made in cash during April 2008, should be adjusted towards excess utilization of credit during March 2008.

Thus at best there is only a case of delay in discharging part of tax liability for March 2008, to the extent it was to be paid through credit in excesses of the ceiling~~s~~ in Rule 6 (3) (c) and its consequence can be payment of interest only. He submits that excess utilization of credit was without any intention to evade payment of duty. Therefore, he submits that penalty is not warranted. He also submits that the show Cause Notice issued on 1.4.2012 for demanding short levy that arose during March 2008, is barred by limitation because the ~~refund~~ returns were filed in time ~~and slowing the passion~~ showing the position and there was no intention to evade payment of tax.

3. Opposing the prayer of the appellant Ld.A.R. for Revenue submits that during March 2008, the appellants utilized more canvat credit than was permitted to be used as per relevant Rule and therefore, a short levy of tax occurred. Since the restriction under rules 6 (3) (c) was in force for long and the appellant was mostly complying with such restriction it is clear that appellant was well aware of the restriction. So such excess utilization to be taken as a case of suppression and extended period of time is rightly ~~involved~~ invoked for making the demand. He also submits that once short fall of payment in cash for the month of March 2008 is made good the excess utilized credit during March, 2008 can refunded to the appellant only if they

filed refund application for such credit, following the procedure for claiming such refund.

4. We have considered arguments on both sides. We find force in the arguments of the appellant. However, we notice that the fact that rules 6 (3) (c) was deleted from 1.4.2008 was not argued before the lower authorities and it is consequences has not been examined. Since there is not much revenue at stake we waive the requirement of pre-deposit of dues for admission of appeal and proceed to decide the appeal itself.

5. The impugned order is set aside and the matter it remitted to the adjudicating authority to consider the entire matter afresh considering the change in law and to considerer the submissions that the appellant want to make. Needless is stay the appellant should be given an opportunity for personal ~~leaving.~~ hearing.

6. Thus the two miscellaneous application stay petition and appeal are disposed of.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Member (Technical)
Neha*

(ARCHANA WADHAWA)
Member (Judicial)