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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/627/2008-CU[DB]

Dated: **11/09/2012**

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

BHARAT SANCHAR NIGAM LTD.
TELECOM DISTRICT MANAGER
BSNL, NEAR KASHI TLAB, SADAR,
BETUL (M.P.)

BHARAT SANCHAR NIGAM LTD. (Appellant)

VS

C.C.E Bhopal (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/571/2012-CU[DB]** dated **05/09/2012** 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 Bhopal
Hoshangabad Road, 48, Administrative
Area, Area Hills, Bhopal (M.P.) 462011

2. Advocate(s) / Consultant(s):

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/Appeal No.627/2008

(Arising out of order in original No.15/Commr/ST/2008 dated 27.5.08 passed by the Commissioner of Customs & Central Excise, Bhopal)

Date of Hearing: 12.6.2012
Date of Pronouncement: 05-09-12

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?	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

M/s Bharat Sanchar Nigam Ltd — Appellant

Vs

CCE, Bhopal — Respondent

Appeared for the Appellant: None
Appeared for the Respondent: Shri K.K. Jaiswal, SDR

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

Final ORDER No. ST/A/571/12-Cus.

Per Mathew John:

When the case was called none appeared for the appellant. But there is letter dated 02-04-12 from the appellant requesting that the matter may be decided on merits in their absence.

2. The appellant provides different taxable service like Telephone, Telex, Fascimile etc. The Appellant functioned as a part of Ministry of Telecommunications of the Government of India till 31-10-2000. From 01-11-2000, they were spun off from the Ministry to constitute a Public Limited Company. When they functioned as a part of Government of India, they were paying service tax by book adjustment between the two Ministries of GOI as per government instructions in force at that time. When they were constituted into a company, they were expected to pay service tax through TR-6 challans into designated banks as was being done by other assessees. But appellant took some time to switch over to the new system.

3. Against the above background a Show Cause Notice was issued proposing recovery of Rs. 2,44,52,998/- for the period of January 2001 to December 2003 being tax amount not paid through TR-6 chllans. After consideration of the submissions of the appellant and detailed verification report of jurisdictional superintendent the adjudicating authority took a lenient view in the matter of mode of payment and reckoned that payment made through book adjustments between government departments for the impugned period as discharge of liability. But she confirmed an amount of Rs.6,53,055/- which was seen to be short paid. This demand was confirmed along with interest under section 75 and penalty under section 76 of the Finance Act, 1994. The appellants paid interest of Rs. 482513/- and penalty of Rs. 365400/- on 31-05-08. Now the prayer in this appeal is that the demand for

interest and penalty may be set aside and amount already paid may be refunded.

4. The contention of the appellant is that tax liability was correctly determined only by 05-03-08 and they could not have paid the huge liability proposed in the Show Cause Notice. They contend that interest is payable only from the date of determination of the liability. They also submit that the delay in payment has happened because of change in constitution of the entity from a Government department to a public Limited company and consequent reconciliation of amounts payable and paid and they request that penalty may be waived.

5. The Ld. A. R. for revenue submits that section 75 provides for payment of interest for the period for which payment of tax is delayed. As per the section, the delay is from the date on which the payment was due and not from the date on which the short payment was determined. If the amount originally determined was wrong the appellant should have correctly determined the interest and paid. That also was not done. In the matter of penalty also the A.R argues that the penalty is for delay in payment of tax for the amount finally found to be short paid. The appellants had not put in place systems by which correct liability was known so that it could be paid. After Oct 2000 the appellant is not a Government department and for delay in payment of tax penalty as applicable to any other assesse would apply.

6. We have considered arguments on both sides. As per section 75 of the Finance Act interest is payable for the period. Section 75 of the Finance Act, 1994 reads as under:

"75. Interest on delayed payment of service tax: Every person responsible for collecting service tax and paying it to the credit of the Central Government in accordance with the provisions of Section 68, who fails to credit the tax or any part thereof to the account of the Central Government within the period specified in that section, shall pay simple interest at the rate of one and one and half percent for every month or part of a month by which such crediting of the tax or any part thereof is delayed."

7. As per the section, interest is payable for delay in payment of tax payable under section 68 and Rules made thereunder. So the delay is to be calculated from the date on which tax was due to the date on which tax was paid.

8. We further find that appellant had not put in place system by which tax is due for each month and no reasonable cause is adduced for such failure for prolonged period. So the appellants are liable to penalty under section 76. So we are not interfering with penalty imposed.

8. For the reasons as above, the appeal is dismissed.

(Pronounced on 5/9/12)

(Archana Wadhwa)
Judicial Member

(Mathew John)
Technical Member

MPS*