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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/2519/2009
Appeal No. : ST/648/2009-CU[DB]

Dated: **25/09/2012**

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

THE GENERAL MANAGER,
BHARAT SANCHAR NIGAM
LIMITED,
TELECOM DISTRICT, NAI ABADI,
MANDSAUR-458001 (M.P.)

THE GENERAL MANAGER, BHARAT SANCHAR NIGAM LIMITED, (Appellant)

VS

C.C.E. INDORE (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/606/2012-CU[DB]**, Stay Order No. **ST/SO/995/2012** dated **23/08/2012** 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. INDORE
Manik Bagh Palace, Post Box No. 10,
Indore 452001 (M.P.)

2. Advocate(s) / Consultant(s):
CHANDER SEN, CONSULTANT
802, PALM GROOVE APARTMENTS,
PLOT NO. F-5, SECTOR-50, NOIDA-
201301

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/Stay No.2519/2009
ST/Appeal No.648/2009

(Arising out of order in appeal No.IND/1/124/09 dated 12.5.2009 passed by the Commissioner of Customs & Central Excise, Indore)

Date of Hearing: 23.8.2012

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?	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 BSNL — Appellant

Vs

CCE, Indore — Respondent

Appeared for the Appellant: Shri Chandan Kumar, Advocate
Appeared for the Respondent: Shri Govind Dixit, SDR

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

Stay ORDER No. ST/S/995/12-Cus
Final Order No. ST/A/606/12-Cus

Per Mathew John:

In this case, there are two issues involved namely (i) service tax demand of Rs. 22,66,485/- on services provided by the appellants under special scheme for village panchayat telephones and (ii)

Interest on delayed payment of service tax arising due to excess utilization of cenvat credit in contravention of Rule 6(3)(c) of Cenvat Credit Rules, 2004.

2. The department was of the view that the services provided through Village Panchayat Telephone were taxable. However, the appellants contend that they are covered by the Exemption Notification No. 3/1994-ST dated 30.6.1994 and the services were exempted under Sl No. 12 and 13. The Adjudicating Authority did not accept the claim.

3. Now the Counsel submits that the issue whether the appellants, after it was incorporated as a Company by separating the business out of the Department of Telecommunication, Government of India, are eligible for this exemption is to be clarified by CBEC Circular No.146/15/2011-Serivce Tax dated 20.9.2011. The Counsel submits that this clarification was not before the adjudicating authority or the first appellate authority when they had taken the impugned decisions. Therefore, he requests that the matter may be re-examined in the light of this clarification. The value of the impugned services also is disputed by appellants.

4. In respect of excess utilization of cenvat credit in contravention of Rule 6(3)(c), it is not clear whether the excess utilization is assessed on monthly basis or for the return period of six months. The Tribunal in the case of Vodafone Essar Digilink Ltd Vs CCE 2011 (24) STR 562 has decided that it is sufficient if such restriction is observed for the return period.

5. In view of the above position, we find that this matter has to go back to the adjudicating authority for re-examination in respect of taxability of VPS services as also interest demanded. Accordingly, after dispensing with the requirement of pre-deposit of dues for admission of appeal, we proceed to decide the appeal itself. We set

aside the impugned order and send back the matter to the adjudicating authority for fresh adjudication in the light of the clarification issued by the Ministry and decisions of the Tribunal.

6. Thus stay petition and appeal are disposed of.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Member (Technical)
MPS*

(ARCHANA WADHWA)
Member (Judicial)