FAX : 011-26108426

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: 27/12/2012

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/751/2012-CU[DB]**, Stay Order No. **ST/SO/1360/2012** and dated **18/12/2012**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar(CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	ST/Stay/1054/2012	ST/456/2012	**Bharat Sanchar Nigam Ltd** Cto, Building No4, Nehru Park Exchange, Indore (mp)

Name and Address of Respondent

2 **C.C.E. & S.T.-Indore**
P.B.NO.10...MANIK BAGH ROAD,
MANIK BAGH PALACE,
INDORE,
MADHYA PRADESH
452001

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Copy To
3Advocate(s) / Consultant(s):

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4 Bar Association, CESTAT, Delhi

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad 38

13 C.D.R. **14** Office Copy **15** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI. PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:18.12.2012

Service Tax Stay Application No.1054 of 2012 in
ST/456 of 2012

[Arising out of Order-in-Original No.04/Commer/ST/IND/2012 dated 13.01.2012 passed by the Commissioner of Central Excise, Indore (M.P.)].

M/s. Bharat Sanchar Nigam Ltd. Appellant

Vs.

CCE, Indore (M.P.) Respondent

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982. No

2. Whether it should 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 Departmental authorities? Yes

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Appearance: Rep. by Shri S.K. Pahwa, Advocate for the appellants.
Rep. by Shri Promod Kumar, Joint C DR for the respondent.

CORAM: Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

Stay Order No. S.T./S/1360/12-Cu
Final Order No.S.T./A/57S1/12-Cu Dated:18.12.2012.

Per Archana Wadhwa:

After dispensing with the condition of pre-deposit of dues, we proceed to decide the appeal itself as the issue stands decided in the same appellant's case.

2. After hearing both the sides, we find that cenvat credit stands disallowed to the appellant on the ground that the same stands availed on the basis of (Advice Notes) for transfer of debit and credit.

3. Ld. Advocate submits that they also have the invoices which are lying in their Head Office but could not be produced before the Commissioner as they did not avail the opportunity of personal hearing neither filed reply to the show cause notice. We find that identical issue is considered in the same appellant's case vide Final Order No.ST/A/467/2012-CU (DB) dated 11.06.2012. The matter was remanded by making the following observations:-

> "4. We find some merit in the observations. It is the appellant who has availed the credit. It is their duty to show that such availment was correct. Mere production of huge central excise invoices, without there being co-relation with the ATDC, the appellant cannot expect the office of the Commissioner to undertake the job which is meant for the appellant. As the onus is upon the appellant to co-relate the documents and provide clear figures to the Commissioner, we direct the appellant to do so within a period of two months from today. It is made clear that if the appellant do not undertake the above exercise, the adjudicating authority is free to

pass appropriate order on the basis of record already available. The stay petition as also the appeal get disposed of in the above manner."

4. By adopting the above decision, we set aside the impugned order and remand the matter to the Original Adjudicating Authority. Needless to say that the appellant would undertake the exercise of co-relation of these notes with the invoices and would cooperate in finalizing the matter. Stay petition as well as appeal stand disposed of.

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

Ckp.