IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Appeal No. ST/55337/2013- ST(SM)

[Arising out of Order-in-Appeal No. IND/CEX/000/APP/325/12 dated 18.09.2012, by the Commissioner (Appeals), Central Excise, Indore]

M/s. Telecom District Manager
BSNL **....Applicants**

Vs.

C.C.E. Indore **....Respondent**

Appearance:

Shri Himanshu Khemuka, Advocate for the Applicants
Shri M.R. Sharma, DR for the Respondent

<u>**CORAM**</u>:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Date of Hearing: 01.02.2017

FINAL ORDER NO. <u>51858/2017</u>- ST(SM)

<u>**Per Archana Wadhwa:**</u>

The short issue involved in the present case is as to whether the appellant, who is engaged in providing tele-communication services is entitled to avail the Cenvat Credit on duty paid on the tower parts or not.

2. Both the sides agree that the issue stands covered against the appellant by the Larger Bench Decision of the Tribunal in the case of ***Tower Vision India Pvt. Ltd. Vs. CCE Delhi 2016 (42) STR 249 (Tri-LB).***

3. However, the demand stands assailed on the point of limitation. The credit was availed in the year 2006-2009 whereas the show cause notice stands issue don 09.03.2011. In the appellant's own case the Tribunal has already taken note of the fact that the issue was not free from doubt and was subject matter of various decisions of the Tribunal, thus leading to a bonafide belief on the part of the assessee in which case, the extended period cannot be invoked. For ready reference, relevant part from the final order no. 50095/2016-SM(BR) dated 19.01.2016 in the case of Bharat Sanchar Nigam Ltd. is reproduced below:

> *"Admittedly, the issue involved here is the eligibility of various tower components, which were classifiable under Chapter 72/73 of the Central Excise Tariff Schedule, which has been a matter of dispute before the various judicial forums. Neither the original order nor the impugned order specifically elaborates the grounds on which the element of suppression, fraud, collusion or willfully mis-statement can be alleged and sustained against the appellant. The only ground mentioned is that under Self-assessment Scheme, the appellant/assessee should have been taken credit only on eligible items. Failure to do so will result in invocation of extended period. I find that such reasoning is not sustainable either in law or on fact. Considering the issue involved has been the subject matter of interpretation before the various authorities including courts, the invocation of extended period in the present set of facts cannot be sustained. Accordingly, the impugned order, in so far as it relates to the cenvat credit on tower components, is not sustainable on the ground of time bar and hence, is set aside. The appeal is allowed."*

4. By following the ratio of the above decision in the appellant's own case, I hold that the extended period is not available to the Revenue. As the entire demand is beyond normal limitation period, I set aside the same and allow the appeal.

[Operative part of the order Pronounced in the open Court]

(Archana Wadhwa)
Member (Judicial)

Bhanu