IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order: 17.3.2017

Appeal No. ST/56713/2013-SM

(Arising out of Order-in-Appeal No. 06(RDN)ST/JPR-II/2013 dated 3.1.2013 passed by the Commissioner, Central Excise, Jaipur-II)

CCE, Jaipur-II — Appellant

Vs.

M/s TDM. BSNL. Banswara — Respondent

Appearance

Shri R.K. Mishra, A.R. - for the appellant

None - for the respondent

CORAM: **Hon'ble Mr. Ashok K. Arya, Member (Technical)**

Final Order No. 52507/2017

Per Ashok K. Arya :

The Revenue is in appeal against the Order-in-Appeal No. 06/2013 dated 3.1.2013 whereunder the penalty imposed on BSNL, Barmer under Section 78 of the Finance Act, 1994 has been dropped.

2. Heard ld. AR Shri R.K. Mishra on behalf of Revenue. There is none present for the respondent viz. GM, TD. BSNL, Barmer, Rajasthan.

3. After perusal of case records and submissions of the Revenue, it is clear that the issue of 'claiming Modvat credit on tower parts which were treated by the respondent, BSNL as capital goods', was

not clear and there interpretation of law was involved. Therefore, no mala fide intention can be imputed to the respondent in availing the Cenvat credit for said tower pats and there is no 'intention to evade taxes' on the part of the respondent, BSNL. Consequently, the impugned order rightly drops the penalty imposed on the respondent under Section 78 of the Finance Act, 1994. It is on record that the respondent has already reversed the Cenvat credit along with interest. Consequently, there is no merit in the appeal of the Revenue.

4. In the result, the impugned order sustains and the appeal is dismissed.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

RM