IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT – IV

Service Tax ROA Application No. ST/ROA/50674/2018 in

Service Tax Appeal No. ST/55420/2014 [DB]

[Arising out of Order-in-Original No. 19/COMMR/ST/ADJ/BPL-I/2014 dated 03.06.2014 passed by Commissioner, Customs & Central Excise, Bhopal]

Bharat Sanchar Nigam Ltd. **...Appellant**

Vs.

C.C.E. & S.T., Bhopal **...Respondent**

Present for the Appellant : Mr. Sandeep Mukherjee, CA
Present for the Respondent: Mr. Sanjay Jain, DR

Coram: HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing / Decision 24.09.2018

FINAL ORDER NO. 53064/2018

PER: RACHNA GUPTA

Miscellaneous Application praying for recalling of the Order dated 28.02.2018 heard. It is submitted on behalf of the applicant that the absence was for the reason of not receiving any notice by the impugned date i.e. 28.02.2018. The said submission is apparent as correct from the record. There is no major objection to this submission on the part of the Department as well. Keeping in view the same the Appeal is allowed to be restored to its original number. Application stands allowed.

2. At this stage, the Ld. Counsel has impressed upon for the final disposal of the application. Department also conceded for the same. The Appeal in hand is against the Order dated 04.06.2014.

3. The facts relevant for the purpose are that the appellants are registered with the Service Tax Department. Department during an audit for the period w.e.f. 01.06.2007 to 30.09.2008 observed that the appellants are providing telecommunication services to their clients and had availed the cenvat credit provided under Cenvat Credit Rules, 2004 w.e.f. 10.09.2004 on account of the service tax paid on various input services and had also utilized the same towards payment of their service tax liability. The said credit was availed on Interconnect Usage Charges (IUC) by the other telephone service providers. Department alleged that the said interconnection of telephone network of BSNL to any other private network operators came into the net of service tax w.e.f. 01.06.2007. Resultantly, the demand vide the Show Cause Notice dated 27.09.2012 was levied. The said demand was confirmed vide the Order under challenge.

4. It is submitted on behalf of the appellant that the issue herein has already been dealt with and stands decided in favour of the assessee. The Department conceded the same however has submitted that the decision of Chandigarh Tribunal as has been relied upon by the appellant, the Department is not aware about the status of subsequent Appeal.

5. After hearing both the parties, we are of the opinion that the issue raised herein is as to whether the appellant is not entitled to take cenvat credit on the services received by BSNL(WTR) on the ground of having no interconnectivity between the appellant and the said unit & various regional service providing units of BSNL. The perusal of decision relied upon by the appellant shows that the issue herein is absolutely identical as that of the issue involved in the said case. The perusal of that decision makes it further clear that the said issue is no more *res integra*. Tribunal Chandigarh has relied upon the decision of BSNL's own case reported in **2012 (28) S.T.R. 624 (Tri.–Chennai)**:

> *"We have considered arguments on both the sides. Firstly, we notice that if the DGM (Projects), Salem followed the procedure of getting registered as "Input Service Distributor" and then distributed the credit to SSA Salem there was nothing wrong in the credit availed by the appellant. Basically, the issue involved is one of procedures and not a case of mis-utilisation of any ineligible credit. Further, we note that there has*

not been any utilization of credit involved because of the entire credit taken at one location was taken in one office making it easy for Revenue to conduct verification as may be necessary. The arguments of the appellants that the premises where the equipments are used belong to BSNL and not to any other party and it is also used for completion of services originating from Salem also are strong arguments in favour of the appellants. Since Modvat credit is a substantial benefit, we are of the view that the impugned credit should not be denied on account of procedural defects of minor nature as pointed out by the Revenue. Therefore, we hold that the impugned order is not maintainable. So, we set aside the order and allow the appeal."

4. Relying thereupon we allow the impugned Appeal.

[Dictated and pronounced in the open Court]

(C.L. MAHAR)
MEMBER (TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

D.J.