IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. ST/102/2008

(Arising out of Order-in-Original No.ST/Shillong No.02/2008 dated 24.03.2008 passed by the Commissioner of Central Excise, shillong)

Bharat Sanchar Nigam Ltd.

Applicant (s)/Appellant (s)

Vs.

Commissioner of Central Excise, Shillong

Respondent (s)

Appearance:

None for the Appellant (s)
Shri H.S.Abedin, AC(AR) for the Respondent (s)

CORAM:
Hon'ble SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
Hon'ble SHRI V.Padmanabhan, Member (Technical)

Date of Hearing/Decision:- 02.05.2018

ORDER NO. FO/75994/2018

Per Dr. Satish Chandra

1. The present appeal has been filed against the Order-in-Original No.ST/Shillong No.02/2008 dated 24.03.2008.

2. None present for the appellant. Heard Shri H.S.Abedin, AC(AR) for the department.

3. From the record it appears that Original Authority has confirmed the demand and asked for recovery of the interest and also imposed penalty. According to the appellant a sum of Rs.47.00 lakh has been wrongly demanded by applying a higher rate of 8% of service tax in respect of services which were actually rendered during the period, when the service

tax was 5%, though the service charges were received subsequently when the rate of service tax was 8%.

4. In the peculiar facts and circumstances we are of the view that service tax rate will apply when the services were rendered i.e. 5%. So, we modify the rate in this regard and allow the claim of the appellant to pay service tax @ 5% which was prevailing at the time of services provided.

5. Regarding the interest it may be mentioned that interest is mandatory and the same will have to be paid by the appellant. Appellant has already paid a sum of Rs.29.00 lacs, but the same was not been taken into consideration. We direct the Adjudicating Officer to adjust Rs.29.00 lacs towards the interest subject to the production of evidence of such payment.

6. The appellant is a government undertaking and it was under the bonafide belief to pay the service tax @5% which we have uphold. So in these circumstances, by exercising the discretion under Section 80 of Finance Act, we cancel the levy of the penalty.

7. In the result, the appeal is partly allowed. Cross Objection is also disposed of.

(Dictated and pronounced in the Open Court)

S/d.
(Justice Dr. Satish Chandra)
President

S/d.
(V.Padmanabhan)
MEMBER (Technical)

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