IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

EASTERN ZONAL BENCH: KOLKATA

Service Tax Appeal No. 162/2008

(Arising out of Order-in-Original No.13/ST/Ayukta/08 dated 29.05.2008 passed by the Commissioner of Central Excise, Patna)

Commr. of Central Excise- Patna

Applicant (s)/Appellant (s)

Vs.

M/s. BSNL

Respondent (s)

Appearance:

Shri H.S. Abedin, A.C. (A.R.) for the Appellant (s)

NONE for the Respondent (s)

CORAM:

Hon'ble Shri P.K.Choudhary, Member (Judicial)
Hon'ble Shri Bijay Kumar, Member (Technical)

Date of Hearing/Decision:- 14.05.2018

ORDER NO. : F/O 76246/18

Per Shri Bijay Kumar

The present appeal has been filed by the Revenue on the ground contained in the memorandum of appeal.

2. Fact of the case, as per the memorandum of appeal, is that the respondent assessee was issued with a show cause notice C. No. V-31/M'pur/Scn-Cell/ST/Adjn./07/2316 dated-20.04.2007 demanding service tax for the amount short paid mentioned therein.

3. Demand was adjudicated upon vide the impugned order amount of Rs.29,92,739/- was confirmed on the respondent assessee under Section

73 (2) of the Finance Act, 1994. As they have already paid the said amount, the adjudicating authority appropriated the same. The various penalty under Section 76, 77 and 78 of the Finance Act was also imposed as per the impugned order and also applicable interest under Section 75 of the Act ibid. However, in the impugned order the proceeding for demand amounting to Rs.30,60,260/- was dropped which was calculated to be in excess. The demand amount was dropped based on the quantification of the short paid amount of Service Tax, based on the reports submitted by the Range Superintendent. Upon realisation by the Revenue that the report of the Range Supdt. was not correct, the Department has filed the impugned appeal before us based on yet another report submitted by the Range Suptd. upon the adjudication process was over.

4. Ld. D.R. appearing for the Revenue submits that as the earlier computation of short paid service tax was not correct, the impugned order should be remanded back to the adjudicating authority for re-calculation of demand by setting aside the amount of service tax that have been dropped by the adjudicating authority in the impugned order.

5. No one appeared for the respondent assessee.

6. We have heard the Ld. D.R. and also carefully considered the appeal record. The demand has been re-quantified after issuance of show cause notice for the subject period based on record and the same was reduced to the extent of amount confirmed in the impugned order.

7. Thereafter, Revenue submits that the computation done by the Range Supdt. is not correct after the adjudication process is over, subsequent re-computation is conducted by the Dy. Commissioner/Range

Supdt. which is the basis for the present before us. It is pertinent to be mentioned that the Adjudicating authority while passing the order has relied upon the quantification and verification report by the Range Supdt. while adjudicating the case. The subsequent re-quantification was done once and the Revenue wants to re-agitate the case which is pending since 2008. After the requantification short payment of service tax comes out to be Rs.10,12,055/-. As per the National Litigation Policy issued by the CBEC has advised that the Department's appeal upto Rs.10.00 Lakhs of duty/tax is not to be persuaded before Hon'ble CESTAT. No doubt, the amount is slightly higher in this case from the threshold limit by Rs.12,055/- . Further, the appal memorandum has not provided the initial computation report or the subsequent one for the service tax short paid. The Ld. D.R. also could not explain the basis of computation and re-computation done before us. In this case, as discussed above, revenue involved is very small and not worth initiating the re-adjudication once again.

8. In the circumstances above, we dismiss the Department's appeal.

(Operative part of the order already Pronounced in the Court**)**

Sd/-	Sd/- 12/6/18
(P.K.Choudhary)	**(Bijay Kumar)**
MEMBER(JUDICIAL)	**MEMBER(TECHNICAL)**

k.b/-