

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA**

S.T.Appeal No.116/08

(Arising out of Order-in-Original Nos.06-08/ST/Commissioner/2008 dated 29.02.2008 passed by Commissioner of Central Excise & S.Tax, Patna)

M/s B.S.N.L., Katihar

Applicant (s)/Appellant (s)

Vs.

Commr. of Central Excise & S.Tax, Patna

Respondent (s)

Appearance:

Shri A.K.Srivastava, Adv. for the Appellant (s)

Shri A. K. Biswas, Supdt. (A.R.) for the Revenue (s)

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER

HON'BLE SHRI BIJAY KUMAR, TECHNICAL MEMBER

Date of Hearing : 19.07.2018

Date of Decision : 19.07.2018

ORDER NO.FO/76458/2018

Per Shri Bijay Kumar :

The present appeal has been filed by Appellant against Order-in-Original No.06-08/ST/Commissioner/2008 dated 29.02.2008 passed by Commissioner of Central Excise & S.Tax, Patna. In the impugned order, the demand have been confirmed by the Adjudicating Authority on the ground that the appellant has not been able to produce the original duty paying documents, for which they have taken the Cenvat Credit.

2. We have heard the Id.Counsel for the appellant and the Id.D.R. for the Revenue and also perused the appeal records.

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3. The issue involved in the present appeal is only regarding raising of demand for which Cenvat Credit has been taken on the strength of photocopy of the invoices, which could not be produced to the original adjudicating authority at the time of hearing and also the over-lapping demands are involved in this appeal. The Id.D.R. for the Revenue, submits that the demand has been confirmed on the ground of failure on the part of the appellant to produce the original duty paying documents for which the Cenvat Credit has been availed. In so far as the over-lapping demands are concerned, this is apparent from the record and that this fact cannot be denied.

4. M/s BSNL, Area Offices, have availed credit on the strength of photocopy of the invoices distributed to them, which are separately registered with the Service Tax Department. It is a fact that M/s BSNL procured the duty paid goods on the single invoices, which are required to be allotted to the different Area/Branch, which are separately registered for the purpose of use thereof. There was no other option but to take photocopy of that invoice for availment of appropriate Cenvat Credit.

5. We find that the original invoices could not be produced by the appellants before the Id.Ádjudicating Authority, which are now available with the appellant as per the Id.Advocate for the appellant. We, therefore, hold that these duty paying documents in original are required to be produced by the appellants to the adjudicating authority. Thereafter, the Adjudicating Authority will verify the same and allow the credit, if found correct; we have also seen from the

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various show-cause notices that there had been overlapping period in the various show-cause notices. The Adjudicating Authority is required to recompute the demand while adjudicating the case afresh, so as to avoid the overlapping period in the various demands. We also direct the adjudicating authority to complete the adjudication procedure within a period of three months from the date of receipt of this order. The appellant is also directed not to seek unnecessary adjournment.

4. With the above directions, we set aside the impugned orders and remand the matter back to the adjudicating authority.

(Dictated and pronounced in the open Court.)

Sd/

Sd/
(P. K. CHOWDHARY)
MEMBER (JUDICIAL)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

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