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

Appeal Nos. ST/271-272/2009

Arising out of Order-in-Original No. ST/Shillong No. 02/2009 dated 20.08.2009 passed by the Commissioner of Central Excise & S. Tax, Shillong.

M/s. Bharat Sanchar Nigam Ltd.
Commissioner of Central Excise & S. Tax, Shillong,
Applicant (s)/Appellant (s)

Vs.

Commissioner of Central Excise & S. Tax, Shillong.
M/s. Bharat Sanchar Nigam Ltd.

Respondent (s)

<u>Appearance:</u>
Shri Krishna Negi, AO for the Appellant (s)
Shri A. K. Biswas, Suptd. (AR) for the Respondent(s)

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL
HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing/Decision: - 02.07.2018

ORDER No…FO/A/76909-76910/2018

Per Bench:

Both, the assessee and the Department have challenged the impugned order dated 20.08.2009, wherein the Commissioner of Central Excise and Service Tax, Shillong has confirmed the demand of Rs.2,99,111/- alongwith interest payable under Section 75 of the Act and also imposed penalty of equal amount under Section 78 of the Act. As both, the department and the assessee have preferred the appeals against the same impugned order, therefore, both the appeals have been heard together for disposal.

2. M/s BSNL, a PSU of Government of India is engaged in providing the telecom services through its “SECONDARY SWITCHING AREAS” (in short SSA). They are regularly purchasing the capital goods and consumables for their needs through common invoices and the procurement was done by Guwahati circle office. In addition to computer software calculation for the Service Tax and Education Cess, the assessee maintains a sub-ledger also.

3. It is their submission that to avoid the delay in payment of taxes, they do pay the service tax without reconciliation, and they are reconciling the figures later on when they file their returns.

4. The department had conducted the audit at the premises of the assessee and alleged the wrongful availment of the CENVAT Credit, for the assessment year 2007-08 and accordingly issued a Show Cause Notice dated 22.01.2009. Reply to the same was filed by the assessee, to the department clarifying all the issues raised in the Show Cause Notice.

5. It is the submission of the assessee that the department had not considered the evidences on record and the order was passed in mechanical manner and hence not sustainable. It has also been submitted that several entires in SLR including EPA and RPA do not attract taxes and hence could not have been taxed at all, which was not considered by the Commissioner, while passing the order. It is his submission that they do not have any reason to suppress the tax liability as they are Government of India’s enterprise. It has also been contended by the officer appearing on behalf of the assessee that in ST-3 Returns filed by them, closing balance of CENVAT Credit was

Rs.15,16,728/- and not Rs.28,939/- as alleged by the department. He further claimed that nothing has been suppressed while filing the ST-3 Return. It was submitted before us that the allegation of department of excess credit availed is imaginary and not supported by any evidence and finally argued that they had Rs.54,637/- unutilized CENVAT Credit as on 31.03.2008. He prayed to set aside the impugned order.

6. The Department Representative on the other hand argued that on analysis of the returns filed by the assessee, it revealed that they had short paid the Service Tax and Education cess and higher education cess for Rs.9,94,291/-, Rs.43,572/- and Rs.44,952/- respectively. He further submitted that they had suppressed the tax liability of Rs.1,07,010/-, Rs.2,140/- and Rs.1,069/- too. It was further argued that the assessee had utilized excess CENVAT Credit of Rs.14,33,152/-. The Ld. D.R. contended that the Commissioner was not justified in confirming the demand less than the account as was proposed in the Show Cause Notice. It is his submission that the adjudicating commissioner was wrong in accepting the adjustments of Rs.4,40,819/-, Rs.32,237/- and Rs.30,082/- against the subsequent liability. It was also argued that allowing the CENVAT Credit for Rs.12,73,199/- and Rs.14,52,192/- was not in accordance with Rule 9 of the CENVAT Credit Rules, 2004. He sought for quashing of the impugned order and to allow their appeal by way of enhancing the service tax liability on the assessee.

7. We have heard the counsels/representatives of both sides and also perused the appeal records. In our considered view, the Commissioner had not considered several aspects and evidences on

record. The impugned order is accordingly liable to be set aside. Both the appeals are allowed by way of remand to the adjudicating authority to decide the matter afresh and to pass order in accordance with law. Since the matter is very old, the Ld. Adjudicating Authority is directed to pass the denovo order within three monts from the date of Communication of this order. The impugned order is set aside. Both the appeals are allowed by way of remand.

(Dictated and pronounced in the open court.)

(Bijay Kumar)	**(P. K. Choudhary)**
Member (Technical)	**Member (Technical)**

Tushar Kr.