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

S.T.Appeal No.198/08

(Arising out of Order-in-Original No.ST/Shillong No.08/2008 dated 28.08.2008 passed by the Commissioner of Central Excise, Shillong)

M/s B. S. N. L.

Applicant (s)/Appellant (s)

Vs.

CCEx, Shillong

Respondent (s)

Appearance:

Shri N.D.Saha, Adv. & Ms. Indrani Chatterjee, Chief Accounts Officer, for the Appellant (s)
Shri D. Halder, Asstt. Commr. (AR) for the Revenue

S.T.Appeal No.210/08

(Arising out of Order-in-Original No.ST/Shillong No.08/2008 dated 28.08.2008 passed by the Commissioner of Central Excise, Shillong)

CCEx, Shillong

Applicant (s)/Appellant (s)

Vs.

M/s B.S.N.L.

Respondent (s)

Appearance:

Shri D. Halder, Asstt. Commr. (AR) for the Revenue
Shri N.D.Saha, Adv. & Ms. Indrani Chatterjee, Chief Accounts Officer, for the Appellant (s)

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

Date of Hearing : 13.12.2018
Date of Decision : 13.12.2018

ORDER NO…FO/A/77112-113/2018

Per Bench :

The present two appeals are filed against the Order-in-Original No.ST/Shillong No.08/2008 dated 28.08.2008. These appeals are cross appeals filed by the Revenue as well as assessee.

2. The dispute pertains to the period from 01.12.1997 to 31.03.2002. The Appellant, M/s B.S.N.L., consisted of several Secondary Switching Area's (SSAs). All the SSAs were separately registered for payment of service tax and were making payment to Department of Telecom (DOT) (during the relevant period) through cheque from the office of Chief General Manager, Guwahati. DOT in turn was to transfer it to service tax account of the Revenue Department. For arriving at the amount of service tax payable during the month, a monthly statement on receipts during the month were prepared in Sub-Ledger Register (SLR). SLR contained account of service provided to the customer including the monthly receipts as well as service tax amount collected, from the SSAs. Anti Evasion Unit of the Department carried out verification of the correctness of the service tax paid by BSNL, Assam Circle, Guwahati. On the basis of the gross amount receipts during the disputed period, the Department worked out the total service tax liability at the applicable rate of 5% and found that BSNL had short paid service tax to the extent of about Rs.3.47 Crores. On these lines, show-cause notice dated 20.03.2003 was issued to M/s BSNL for demand of service tax as above. The show-cause notice was finalized by the adjudicating authority with the issue of the impugned order. The adjudicating authority took note of

the fact that the Department had already adjudicated and confirmed through a separate proceeding, a part of the service tax demand covered in the present show-cause notice. Accordingly, he reduced the service tax demand to Rs.2.77 Croresss and ordered the appellant, M/s BSNL, to pay the same along with interest. He also imposed penalty under Section 78 of the Finance Act, 1994.

3. Revenue has filed the present appeal against dropping of the portion of the demand with the submission that the issues involved in the present proceeding, were different from the other proceeding in which the service tax was demanded.

4. M/s BSNL has also filed appeal challenging the order for payment of service tax amounting to Rs.2.77 Crores.

5. M/s BSNL is represented by Shri N.D.Saha, ld.Advocate assisted by Ms.Indrani Chatterjee, Chief Account Officer, BSNL, Assam. Revenue is represented by Shri D.Halder, ld.D.R.

6. On behalf of M/s BSNL, the following main arguments are advanced as summarized below :

(i) Revenue has proceeded to demand service tax on the basis of gross receipts shown in the Books of Account of BSNL during the disputed period. It was submitted that this approach is irregular and mentioned the following specific grounds on which some of the receipts of BSNL cannot be charged to service tax :

(a) Service tax under the category of telephone service was introduced w.e.f.01.07.1994. However, for the service rendered for the period prior to 01.07.1994, some payments were received during the disputed period. Such amounts are not liable for payment of service tax ;

(b) Service tax rendered through Public Call Offices (PCO) enjoyed exemption during the relevant period and as such, receipts from PCO are not liable for service tax ;

(c) The gross receipts of BSNL also included the security deposit collected under various Scheme. Such deposits cannot be considered as consideration for providing service tax and as such cannot be subjected to service tax ;

(d) The payment received also included late payment sur-charge which is not to be considered as part of the consideration for payment of service tax in terms of clarification issued during the relevant period ;

(e) In a few cases, the bills originally issued have been subsequently revised/cancelled. In some cases, cheques have been dishonored and the subscribers have made subsequent payment in cash. Such amounts which appeared in the Books of Account, will need to be suitably adjusted for charging service tax.

(ii) The ld.Advocate also submitted that an elaborate exercise has also been carried out by BSNL. The CAO of BSNL submitted that under the various heads outlined above, the total receipts have been calculated and if the same is excluded from the total receipts, BSNL will not be liable for any additional payment of service tax.

(iii) It was also submitted that calculations regarding the actual portion of the consideration, which will not be liable to service tax under the above heads, have been certified by an independent

Chartered Accountant, M/s SASS & Associates through their Certificate dated 12.12.2018. The calculations were prepared on the basis of the verification conducted in house by BSNL which have been certified by the independent Chartered Accountant. As such, it was submitted that the demand ordered in the impugned order may be set aside.

7. The ld.D.R. for the Revenue, while justifying the demand for service tax, reiterated the grounds of the Revenue's appeal.

8. We have heard both sides and perused the records.

9. It is seen that the Departmental Officers have undertaken verification of the correctness of the service tax paid by BSNL, Assam Circle, Guwahati for the disputed period. Service tax dues were discharged at the relevant time. But the Department noticed that if the total gross receipts in the Books of Account of BSNL is considered and the service tax is worked out at the applicable rate of 5%, the total service tax liability appeared more than the service tax already paid.

10. During the course of arguments in the present appeal, the ld.Counsel for the appellant, explained that the service tax cannot be charged on the basis of the gross receipt in the Books of Accounts of BSNL. During the relevant time, service tax was payable on the basis of actual receipts. It has been explained on behalf of BSNL that certain receipts, though accounted in the Books of Account, are not liable for payment of service tax, eg. receipts for services rendered prior to the introduction of service tax ; receipts from Public Call Offices ; certain receipts such as, security deposit, late payments charges etc. To

support their calculation arriving at the amounts deductible from the gross receipts, BSNL has also submitted a Certificate from an independent Chartered Accountant. From a perusal of the said Certificate dated 12.12.2018, it is seen that the Chartered Accountant has attested to the correctness of the calculation put together by BSNL team from their relevant accounts.

11. The result of the re-conciliation of the service tax payable is as follows :

(**Amts.in Rs. thousands)**

Sl.No.	Description	Total
1.	Gross Amount Realised	6180004
2.	Amount Realised Prior to 07/1994	20896
3.	Local PCO/VPT COLL	11402
4.	S/Charge Realised	14481
5.	Cancellation	451758
6.	Misc. Receipt	15729
7.	STD PCO COMM. Wrongly taken in realization	15906
8.	Amount Adjusted	161721
9.	Reliance payment	28352
10.	Written off	0
11.	Cheque dishonoured	2463
12.	Net taxable amount realised	5457296
13.	S/Tax payable	272864
14	S/Tax paid	267576
15.	Net Different (Service Tax payable)	5288
16.	Amount paid	11,485
17.	Excess amount paid	6197

12. Out of the total gross receipts, the amounts, which are not liable to service tax are to be excluded. After the said deduction, we note that BSNL during relevant time, had short paid service tax to the extent of about Rs.52.88 lakhs. However, it is also seen that BSNL has suo-motu made payment of such differential service tax of Rs.74.20 lakhs. As such, no more service tax is required to be paid.

13. Revenue has filed the present appeal challenging the amount of service tax dropped by the adjudicating authority. On the basis of re-calculation of service tax dues and submission of a Certificate from the independent Chartered Accountant, we are led to the conclusion that the correct service tax liability has been arrived at and settled by BSNL.

13. In view of the above, we are of the view that the impugned order is not sustainable and we set aside the impugned order and allow the appeal filed by M/s BSNL.

14. Consequently, the Department's appeal is rejected.

(Dictated and pronounced in the open court.)

Sd/	Sd/
(P.K.Choudhary)	**(V.Padmanabhan)**
Member (Judicial)	**Member (Technical)**

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