

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

EASTERN ZONAL BENCH: KOLKATA

Appeal No. ST/154/2009

**(Arising out of Order-in-Original No. 57/Commr/ST/Kol/2008-09
dated 18/03/2009 passed by Commissioner of Service Tax,
Kolkata.)**

Commr. of Service Tax, Kolkata
Vs.

Appellant (s)

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

Respondent (s)

Appearance

Shri S. Mukhopadhyay, Suptd. (A.R.) for the Revenue
Shri N. D. Saha, Advocate for the Respondent

Appeal No. ST/77986/2018

**(Arising out of Order-in-Original No. 59/COMMR/CGST &
CX/KOL/NORTH/2017-18 dated 26/03/2018 passed by
Commissioner of CGST & CX, Kolkata.)**

M/s. B.S.N.L.
Vs.

Appellant (s)

Commr. of Service Tax, Kolkata

Respondent(s)

Appearance

Shri N. D. Saha, Advocate for the Appellant
Shri S. Mukhopadhyay, Suptd. (A.R.) for the Revenue

CORAM:

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

**Date of Hearing-12.12.2018
ORDER NO. FO/77103-77104/2018**

Per Bench

Appeal No. ST/77986/2018 has been filed against the Order-in-Original No. 59/COMMR/CGST&CX/KOL/NORTH/2017-18 dated 26/03/2018. Appeal No. ST/154/2009 has been filed by Revenue against the Order-in-Original No. 57/Commr/ST/Kol/2008-09 dated 18/03/2009.

2. The Show Cause Notice dated 16/10/2007 was issued to BSNL on

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the ground that they carried out Suo Motto adjustments of the excess Service Tax paid in certain months, in subsequent months. The Revenue was of the view that such adjustments were made without following the procedure outlined in Rule 6(4A) of the Service Tax Rules, 1994. It was also observed that BSNL had made a short payment of Service Tax in the months of August and September 2006, which were subsequently made good in the months of September and October 2007, but they failed to pay the applicable interest. The Show Cause Notice dt. 16/10/2007 was decided by issue of Order-in-Original dated 18/03/2009 in which the Adjudicating Authority dropped the proceedings. Revenue is in appeal against the order with the submission that the BSNL has failed to pay the interest due on the delayed payment. They have also raised the ground that BSNL will be liable for payment of penalties.

3. It is submitted by Shri N. D. Saha, Ld. Advocate that the adjustments of excess paid Service Tax in subsequent months has been permitted by the Tribunal in various decisions and as such there is no irregularity on the part of BSNL in such adjustments. He undertook that the interest applicable for the delayed payment in the months of August and September, 2006 will be made good by the BSNL.

4. In view of the fact that the applicable interest for delayed payment of Service Tax has already be admitted to be paid by BSNL. We find no reason to interfere with the impugned order and the same is hereby sustained and the appeal filed by Revenue is rejected.

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5. Considering the appeal ST/77986/2018, the Ld. Advocate submitted that the order dated 26/03/2018 has been passed by Adjudicating Authority against the same Show Cause Notice dated 16/10/2007 which was already decided earlier by issue of Order-in-Original dated 19/03/2009. As such, he submitted that the order dated 26/03/2018 should be dismissed as infructuous. He also prayed that the consequential refunds may also be allowed. Going through the records, we find that the Order-in-Original dated 26/03/2018 has been passed completely ignoring the fact that the same Show Cause Notice already stands decided by issue of the earlier order dated 18/03/2009. As such we have no hesitation in allowing this appeal with the direction to the Lower Authority to refund the amount of pre-deposit forthwith.

(Dictated and Pronounced in the Open Court)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(V. PADMANABHAN)
MEMBER (TECHNICAL)

Pooja