

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

**Service Tax Appeal No.77134 of 2018**

Arising out of Order-in-Appeal No.07/SKS/BOL/ST/2017-18 dated 30.01.2018 passed by Additional Director General (Taxpayer Services), Central Excise, Customs & Service Tax, Kolkata Zonal Unit, Kolkata

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

Suri Telecom District, Hrishikesh Bhaban, P.O.-Suri,  
Dist.-Birbhum, Pin.-731101

**APPELLANT**

*VERSUS*

**CGST & Excise, Bolpur**

Nanoor Chandidas Road,SIAN, Bolpur, Dist.-Birbhum,  
West Bengal, Pin-731204

**RESPONDENT**

**APPEARANCE**

Shri N.D.Saha, Advocate for the Appellant

Shri T.K.Mondal, Authorized Representative for the Respondent

**CORAM:**

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

DATE OF HEARING : 16. 07. 2019

DATE OF PRONOUNCEMENT/DECISION : 06 January 2020

**FINAL ORDER NO.77037/2019**

**Per Shri P. K. Choudhary :**

The issue in dispute in the present appeal is regarding procurement of hardware equipments on centralized basis and transferred under the cover of an "Advice of Transfer Debit" (ATD) to different exchanges from where, the services were provided and the concerned Offices took Cenvat Credit of duty paid on equipments based on this ATD.

2. The facts in brief are that the appellant is a Government of India Enterprise and is engaged in rendering telephone services. That the appellant functions under the instruction of DOT/BSNL issued from time to time, which are binding on the appellant being Government of

India Enterprises. It is the case of the appellant that as per the instruction received from time to time, the service tax collected, was being credited regularly to the Central Government by the Head Office (DOT Cell).

3. The Ld.Advocate appearing on behalf of the appellant, contended that the appellant's Unit has been regularly paying service tax through book transfer/adjustment through DOT Cell in terms of departmental Circular No.5/5/94 dated 11.10.1994. The CAO (DOT Cell) in turn paid the total amount of tax received from all the assessee's unit in West Bengal Telecom Circle centrally to the credit of Central Government. Subsequently, in terms of corporatization of BSNL, a Circular No.33/1/2001 dated 29.01.2001 was issued and the system of payment of service tax was changed from the earlier book adjustment method to payment by TR-6 Challans at the designated banks and through e-banking. The Ld.Advocate further submits that the telephone bills are collected through different internal and external collection points, such as, post office, banks, telephone exchanges, authorized bill payment centers of different accounting places etc. The telephone services are rendered through the above mentioned different accounting places, situated at different parts of Bolpur, having the Head Office at 1, Council House Street, Kolkata-700001. Show-cause notice dated 22.09.2010 was issued alleging irregular availment and utilization of cenvat credit amounting to Rs.19,31,631/- during the financial year, 2009-10. The Ld.Advocate relied upon the decisions of the Tribunal in the following cases :

- (i) India Cellular Ltd. Vs. CCEx. : 2009 (19) STT 423 (CESTAT-New Delhi) ;
- (ii) CCEx. & Customs, Daman Vs. Jalaram Plastic Pack : 2012 (35) STT 94 (CESTAT-Ahmedabad) ;
- (iii) Pharnalab Process Equipment Pvt. Ltd. Vs. CCEx. : 2009 (242) ELT 467 (CESTAT-Ahmedabad) ;
- (iv) Trident Ltd. Vs. CCEx., Chandigarh : 2012 (35) STT 99 (CESTAT-New Delhi).

4. The Ld.D.R. appearing on behalf of the Revenue, justified the impugned order.

5. Heard both sides and perused the appeal records.

6. I find that the appellant assessee, M/s BSNL, Suri Telecom District, P.O.Suri, Dist.-Birbhum, have availed the cenvat credit on capital goods on the basis of an Advice Transfer Debit Bill issued by Central Office, since the Central Office had procured the hardware equipments on centralized basis and transferred to different exchanges from where the services were provided under the cover of an Advice Transfer Debit Bill and concerned exchanges would take cenvat credit of duty paid on equipment based on such ATD. I find that the present issue is no more *res-integra* in view of the various decisions of the Tribunal and the same has also been accepted by the Department. From the copy of the ATD Bills submitted during hearing, I find that the ATD Bills contained the details, which are required as per Rule 9 (2) of the Cenvat Credit Rules, 2004. The observation of the Adjudicating Authority and the lower appellate authority, are contrary to the facts noticed by me on the basis of documents submitted before me. Since it is not clear as to whether the same documents, which are produced before me, were produced before the adjudicating authority or not, the matter has to go back to the adjudicating authority, who shall go through the documents and re-adjudicate the matter afresh. If the documents contained the details, which are required under Rule 9 (2) of Cenvat Credit Rules, 2004, the benefit may be extended. Needless to say, the appellant shall be given an opportunity to present their case.

7. Appeal is allowed by way of remand to the adjudicating authority.

(Pronounced in the open Court on 06 January 2020)

Sd/

**(P. K. CHOUDHARY)**  
**MEMBER (JUDICIAL)**

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