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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.299 of 2012

(Arising out of Order-in-Original No.07/ST/Denovo/Comm./2012 dated 28.03.2012 passed by Commissioner of Central Excise, Customs & Service Tax, Patna.)

M/s. BSNL
(Muzaffarpur, Bihar)

...Appellant

VERSUS

Commissioner of Central Excise, Customs & Service Tax, Patna
.....Respondent
(3rd Floor, C.R.Building, (Annexe),
Birchand Patel Path, Patna.)

APPEARANCE

NONE for the Appellant (s)
Shri T.K.Mondal, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI ANIL CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI SANJIV SRIVASTAVA, MEMBER(TECHNICAL)

FINAL ORDER NO. 75036/2021

DATE OF HEARING : 9 February 2021
DATE OF DECISION : 9 February 2021

ANIL CHOUDHARY :

The appellant assessee is absent on call. Heard the learned Authorized Representative for the Respondent department and perused the records.

2. This is the second round of litigation. The appellant is a provider of telecom service and registered with Department. The case of the appellant is that out of their gross turnover, some part of it is taxable and some part is not taxable under the provisions of Service Tax. However, the adjudicating authority have demanded tax on the gross turnover without looking into the evidence led by the appellant. The

appellant also submitted a calculation chart reflecting therein the taxable value, which was at variance than the declared amount to the audit team and in the ST-3 returns for the relevant period. It is also contended that the different services are taxable at different rate. Appellant have contended in the appeal memo that they had submitted month-wise calculation chart *vis-à-vis* calculation register of exempted services like VPTs and Cheque Dishonour Register and claimed that they had paid much more Service Tax than required to be paid by them and such excess payment of Service Tax is actually refundable on final adjudication. In the earlier round also this Tribunal had remanded the matter for proper adjudication after looking into the evidence and hearing the appellant.

3. Accordingly, we are allowing the appeal by way of remand to the original adjudicating authority, who shall look into the evidence and after hearing the appellant, pass a reasoned order. The appellant is also directed to appear with their representation and all evidences they wish to rely which they have filed earlier or they want to produce now before the authority. The appellant is directed to appear before the adjudicating authority in the third week of March 2021 and seek opportunity of hearing accordingly. The Adjudicating authority, in view of the huge bulk of documents and books of accounts may obtain an Audit Report as provided under section 14AA of the Central Excise Act, 1944.

The appeal is thus allowed by way of remand.

(Dictated and pronounced in the open Court.)

SD/
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

SD/

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

sm