

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.1**

Service Tax Appeal No.75824 of 2015

(Arising out of Order-in-Original No.02/ST/DENOV0/COM/2015 dated 31.03.2015
passed by Commissioner, Central Excise & Service Tax, Patna.)

M/s. Bharat Sanchar Nigam Ltd., Motihari

(O/O TDM, Motihari, P.O.-Motihari, Dist-East Champaran-845401.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Patna

.....Respondent

(Central Revenue Building, Bir Chand Patel Path, Patna.)

APPEARANCE

Shri Alok Kumar Shahi, Advocate for the Appellant (s)
Shri D.Sue, Authorized Representative for the Revenue

**CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)**

FINAL ORDER NO. 77234/2025

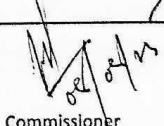
DATE OF HEARING : 11.08.2025

DATE OF DECISION : 11.08.2025

Per : R. MURALIDHAR :

On 25.03.2025 this Bench had passed an order directing both the Appellant and the Department to properly reconcile the demands made from BSNL on account of non-payment of Service Tax and on account of eligibility of Cenvat credit. Today, the Ld.Counsel for the Appellant submits a copy of the letter issued by the Assistant Commissioner(Tribunal), CGST & CX, Patna-II, Headquarters dated 08.08.2025 annexing therewith the reconciliation report which is duly signed by the Commissioner, CGST & CX, Patna-II Commissionerate, Patna. The reconciliation report is reproduced below:-

Reconciliation Report in pursuance of Hon'ble CESTAT Order dated 25.03.2025 in respect of Service Tax Appeal No. 75824 of 2015		
Sl. No - Petitioner/Comm 2015 dated 31.03.2015	Appellant Submission in response to CESTAT Order dated 25.03.2025	View of the Adjudicating Authority
Para 3.15(a) Demand Confirmed - 4,46,140/- Demand Dropped - 1,02,25,931/-	The Appellant submitted Annexure-B in which following details were produced : 2002-03 : Service Tax realised - 31,27,053/- 2002-03 : Service Tax paid - 26,17,880/- Short payment : 5,09,173/- 2003-04 : Service Tax realised - 86,18,660.58/- 2003-04 : Service Tax paid - 1,08,68,725/- Excess Payment : 22,50,064.42/- Service Tax realised for the entire period - 1,17,45,713.58/- Service Tax paid for the entire period - 1,34,86,605.00/- Difference - 17,40,891.42/- (Excess payment).	The submission of the appellant is not admissible as there is no such provision of adjustment of short payment of service tax of a previous financial year from the excess payment made in subsequent financial year in terms of the provisions under sub rule 4(A) of Rule 6 of Service Tax Rules, 1994. Rule 6 (4A) : "[Notwithstanding anything contained in sub-rule (4), where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be.] "
Para 3.15(b) Demand Confirmed - 46,62,169 Demand Dropped - 13,94,223	The Appellant submitted that Demand was raised due to non production of cenvat stock register which has been provided in Annexure- A. After going through the stock register it becomes clear that petitioner has ample cenvat credit and has rightly utilized it and had not violated cenvat credit rules.	The appellant have utilized Cenvat Credit during 2004-05 & 2005-06 amounting to Rs.43,27,782/- (9,00,000+34,27,782) within permissible limits as per Cenvat Credit Rules, 2004 and it may be considered admissible and para 3.15(b) of the impugned order regarding demand of short paid service tax amounting to Rs.46,62,169/- may be restricted to the differential amount of Rs.3,34,387/-
Para 3.15 (h) Demand Confirmed - 43,27,782/- Para 3.15 (j) Demand Confirmed - 43,27,782/-	The Appellant submitted that Demand was raised due to non production of cenvat stock register which has been provided in Annexure- A. After going through the stock register it becomes clear that petitioner has ample cenvat credit and has rightly utilized it and had not violated cenvat credit rules.	The appellant have utilized Cenvat Credit during 2004-05 & 2005-06 amounting to Rs.43,27,782/- (9,00,000+34,27,782) within permissible limits as per Cenvat Credit Rules, 2004 and it may be considered admissible.
Para 3.15(c) Demand Confirmed - 5,24,880/-	The appellant submitted that total service tax realised in 2004-05 amounting to Rs.1,52,41,333.71/- is inclusive of Education Cess of Rs.1,09,694.25/- and service tax realised in 2005-06 amounting to Rs.1,66,49,301/- is inclusive of Education Cess of Rs.3,16,534.50/- and the figure of Education Cess mentioned in the SCN amounting to Rs. 5,24,880/- (1,91,893/+ 3,32,987/-) is not correct.	From the calculation chart (Annexure-B) submitted by the appellant, it appears that service tax realised amounting to Rs.1,52,41,334/- for the F.Y. 2004-05 and Service tax realised amounting to Rs.1,66,49,301/-for the F.Y. 2005-06 is inclusive of Edu.Cess @ 2% and it may be considered admissible.
Para 3.15 (k) Demand Confirmed - 2,77,052/-	BSNL has made excess payment on which interest has been calculated, Department should charge interest on tax payable amount and not tax on paid amount which had been paid in excess	The submission of the appellant is not sustainable as the applicable interest amount was quantified on delayed filing of due returns during the period from Dec'03 to Feb'06. Since taxability declared in service tax returns are considered as their actual liability towards the self-assessed and declared tax, hence any further revised taxability is not considerable. The noticee was required to pay interest liability to the tune of Rs.2,77,052/- in terms of Section 75 of the Finance Act, 1994 but failed to pay the same as per their own notion


 Commissioner
 CGST & Central Excise,
 Patna-II Commissionerate
 Patna

2. We find that in respect of Para 3.15(a) of the Order portion of the impugned order dated 31.03.2015, the Commissioner has held that Rs.17,40,891.42 is the net excess payment made by the Appellant.

3. In respect of the confirmed demand at Para 3.15(b) of the impugned Order-in-Original, after reconciliation it is found that the Appellant has taken excess Cenvat Credit to the extent of Rs.3,34,387/-. In respect of the demands confirmed under Para 3.15(h) and 3.15(c), the reconciliation arrived shows that no amounts are to be paid by the Appellant.

4. In respect of Para 3.15(a), the Appellant is required to pay interest of Rs.2,77,052/- under Section 75 of the Finance Act, 1994.

5. After hearing both sides, we find that proper reconciliation has been done by the Commissioner after going through the documentary evidence placed before him. The amounts arrived at after the reconciliation, is not being disputed by both the sides.

6. The Net position emerges as under:-

(a)	The excess amount paid by the Appellant	Rs.17,40,891
(b)	The payment to be made by the Appellant (on account of excess Cenvat Credit taken)	Rs. 3,34,387/-
(c)	Interest to be paid by the Appellant	Rs. 2,77,052/-
	Net Excess payment made by the Appellant	Rs.11,29,452/-

7. The Adjudicating authority has not granted the refund of the above amount on the ground that in terms of Rule 6(4A) of the Service Tax Rules, 1994, there is no provision to adjust the excess amount by way of refund. The relevant portion of the Rule 6(4A) is extracted below:-

RULE [6. Payment of service tax. — [(1) The service tax shall be paid to the credit of the Central Government, -
.....
.....

[(4A) Notwithstanding anything contained in sub-rule (4), where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability

for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be.

8. From the above Rule, it is seen that the assessee can adjust the excess amount paid by him against his Service Tax liability for the succeeding month or quarter as the case may be. The Rule does not say that it has to be adjusted only in the immediate succeeding month/quarter. Therefore, there is no bar if such adjustments are made in any of the future subsequent month/quarter. Hence, we hold that the Appellant would be eligible for refund of the above amount, subject to the Appellant fulfilling the condition of fulfillment of unjust enrichment clause.

9. The Adjudicating authority is directed to go through the documentary evidence to be placed by the Appellant on the unjust enrichment clause and grant the refund along with applicable interest to the Appellant. Since the issue has been going on for many years and has been sorted out now, the Adjudicating authority will not raise the issue of time bar for granting the refund. Only unjust enrichment clause is required to be verified by him.

10. The Appeal stands disposed of thus.

(Dictated and pronounced in the open Court.)

Sd/

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)