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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 70826 of 2013

(Arising out of Order-in-Original No. 47/ST/Commr/2013 dated 28.03.2013 passed by the Commissioner, Central Excise, Ranchi)

M/s. Bharat Sanchar Nigam Limited
(General Manager,
O/o GMTD Dhanbad, Bharat Sanchar Nigam Limited
Behind head Post Office, Hirapur
Dhanbad-826001, Jharkhand)

Appellant

VERSUS

Commr. of Central Excise & Service Tax, Ranchi
(Central Revenue Building, 5-Main Road, Ranchi-834001)

Respondent

With

Service Tax Appeal No. 70913 of 2013

(Arising out of Order-in-Original No. 47/ST/Commr/2013 dated 28.03.2013 passed by the Commissioner, Central Excise, Ranchi)

Commr. of Central Excise & Service Tax, Ranchi
(Central Revenue Building, 5-Main Road, Ranchi-834001)

Appellant

VERSUS

M/s. Bharat Sanchar Nigam Limited
(General Manager,
O/o GMTD Dhanbad, Bharat Sanchar Nigam Limited
Behind head Post Office, Hirapur
Dhanbad-826001, Jharkhand)

Respondent

APPEARANCE:

Mr. Ajoy Chhabra, CA & Mr. Arvind Modi, CA for the Appellant/Respondent
Mr. Debapriya Sue, Authorized Representative for the Respondent/Appellant

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

FINAL ORDER NO.77437-77438/2025

Date of Hearing : 02 September 2025
Date of Decision : 02 September 2025

ORDER [PER R. MURALIDHAR]

In the present case, the Service Tax demand was made on the assesse BSNL. After due process the Adjudicating authority has dropped some of the demands, against which the Revenue is in appeal before us. Being aggrieved by the confirmed demand, the appellant is before the Tribunal. We have taken up both tge appeals together for disposal.

2. The Ld Consultant appearing on behalf of the assessee – BSNL, submits that the confirmed demand is as per the following Table and he also submits the appellant's defence in each of these issues :

S. No	Grounds of Demand	Amount	Appellant's Contention
1	Cenvat claimed on the basis of photocopy of the Invoices	Rs 2,61,10,227/-	Cenvat Allowable on photocopy of the Invoices. Appellant relies on the following Judgments:
			-DKNV Engineering Private Ltd Vs Commissioner of Central
			Excise & Service Tax, Daman(2023)2 Centax 41(Tri- Ahmd)
			Pepsico India Holding (P) Ltd vscommissioner of Central
			Excise ,Mumbai-II {(2017)77 taxman.com 229(Mumbai- CESTAT)}
			Rely On Final Order No. 76125/2024 dated 11.06.2024 in the matter of M/S Bharat Sanchar Nigam Limited vs. Commissioner of Central Excise & Service Tax, Ranchi
2	Service tax Short paid on services provided for the period October'03 to February'2005	Rs 1,67,96,233/-	**1)** The amount mentioned under Column 2 in ANNEXURE-A is the Gross Amount Received during the period (I.e. the amount collected is inclusive of the tax amount) and tax calculated at Column 4 is @Rate of tax applicable during the relevant period i.e. 8% and 10% which is wrong for the following reasons:
			a) The Department has ignored the provisions of Rule 6 of Service TAx Rules -i.e. during the impugned period the tax was payable on receipt of consideration and the department has also ignored that collection includes the amount billed at 5% , 8% (during Oct'2003 to Aug'2004) and 5%, 8% and 10% (during September 2004 to February 2005)

			b)The Department has ignored the amount of excess tax paid during certain months during the impugned period. The Appellant relies on **a) General Manager, B.S.N.L versus Commissioner of Central Excise, Raipur [2015 (39) S.T.R. 278 (Tri. Del.)** **b) BHarti Cellular Ltd.: Versus Commissioner of Central Excise, New Delhi - [2006 (1) S.T.R. 39 (tri. Del.)]**
			c) Adjustment of Excess/short paymemt has been allowed in the same SCN-Refer Annexure-A3 and Annexure-A4 of RUD
			d) Out of Rs.16796233, amount related to Basic Telephone Service i.e. Land Line connections is Rs.16564206/- which is POST PAID ONLY and has different billing cycles
			e) Amount related to CELL ONE - Is post paid service and billed at applicable rates but paid upon collection
			f) For Ex-Cell services (Pre-paid Mobile)amount of Rs.75,731/- is accepted by the appellant
3	Service tax short paid for the months April 05, July 05, August 05 and March 06 and Cess during period March 05 to March 06	Rs 40,71,996/-	Calculations of the appellant is attached herewith. Perusal of the sheet will reveal that there is excess payment of Rs. 38,52,364/- as the department has not adjusted excess payments in some of the months in subesquent months.
4	Service Tax Short Paid for the year 2007-2008	Rs 4,68,40,293/-	Demand has been wrongly arrived at by taking entries on the Debit side of the Service Tax Payable ledger (which has total of all services) which is the sum total of Amounts paid as service Tax and other adjustments (explained in Separate Sheet).
			Against the demand in the SCN, selectively payments related to Basic Telephone Services only has been considered
			Calculation sheet of the Appellant alongwith the ledger, Challan and elimination of adjustment entries will reveal that there is no short payment
5	Service Tax short paid for the year 2007-2008	Rs 2,99,63650/-	Demand has been wronly arrived at by taking entries on the Debit side of the Service Tax Payable ledger for Mobile Services while the amount is already taken as mentioned in point no. 4 above which has resulted in duplication of demand
6	Service Tax short paid during april 2008 to Sep 08	Rs 42,36,176/-	The demand has been erroneously arrived at ignoring the fact that the collections/receipts are gross collections i.e. the collections are inclusive of tax.

			Demand has ignored that fact that the gross collections are inclusive of collections which have attracted different rates at different times ranging from 5% to 12% during different periods.
7	Service Tax short paid during FY 2006 to 2007	Rs 1,56,76,605/-	Para 8 of SCN merely states the amount of demand without giving any details/reasons for the demand. The Order also merely reiterates the same (point no. 18 of O-I-O)
8	Interest on Delayed payment of Service Tax		
	April 2005 to March 20026	Rs. 20552	Appellant agrees with the calculation and agrees to pay
	April 2006 to October 2006	Rs. 105600	Out of Rs. 105600/- only Rs. 8784/- is payable which the appellant agrees to pay. The difference is due to the reason that the date of cheque clearence has been considered in the SCN whereas the date of deposit is to be considered if the cheque is not returned unpaid
9	Short payment of Service Tax	Rs 4799/-	Appellant agrees with the calculation and agrees to pay
10	short payment of service Tax during October 03 to February 2005	Rs 3,64,01,408/-	The amount demanded is on account of Internet Charges, Leased Circuit Line, Telegram Services, Access/Inter Usage Charges(IUC), Installation Charges and Fixed Rental Charges. Annexure of Bifurcation and appellant's contention is attached with explanations, relevant notification/circular

3. The Learned Consultant appearing on behalf of the appellant submits that in case of Cenvat claimed based on the photocopy of the invoices [Sl No.1 of the above Table], he relies on the following case laws:-

(i) DKNV Engineering Private Ltd. Vs. Commissioner of Central Excise & Service Tax, Daman (2023) 2 Centax 41 (Tri.-Ahmd)

(ii) Pepsico India Holding (P) Ltd. Vs. Commissioner of Central Excise, Mumbai-II (2017) 77 taxman.com 229 (Mumbai-CESTAT)

4. He also relies on this Bench's **Final Order No. 76125/2024 dated 11th June 2024** wherein the Tribunal has held that the appellant would be eligible to take the Cenvat Credit based on photocopies so long as receipt of the inputs / input services is not disputed.

5. In respect of the Service Tax short paid during the period 2006-07 [Sl No.7 of the above Table], he submits that the Show Cause Notice does not specify the taxable service under which the demand has been made and confirmed. He relies on the case law of (i) Dr. Lal Path Lab Pvt. Ltd. Vs. Commissioner of Central Excise, Ludhiana-2006 (4) S. T. R. 527 (Tri-Del.) & (ii) Commr. of Central Excise, Ludhiana Vs. Dr. Lal Path Lab Pvt. Ltd.- 2007 (8) S. T. R. 337 (P & H) wherein, it has been held that the Show Cause Notice should specifically mention the classification of service under which the demand is being made.

6. In respect of the short payment of Service Tax, during the period October 2003 to March 2005 (Serial No. 10 above), he submits that the major portion of the demand is on account of Internet Charges, leased Circuit Line, Telegram Services, Inter Usage Charges (IUC). He points out that only under Finance Bill, 2007, IUC has been brought under the Service Tax bracket. Therefore, on this ground itself, the demand is not sustainable.

7. In respect of the other demands, he fairly concedes that they will present all the documentary evidence before the Adjudicating Authority for dropping / re-quantifying the demand. He further submits that in respect of such services, it is on record that the appellant has not charged any Service Tax on their clients. Therefore, he prays that the re-quantification may be done after allowing the appellant benefit of cum-tax.

8. The Ld Consultant prays that the appeal field by BSNL may be allowed and the Revenue’s appeal may be dismissed.

9. The Learned AR reiterates the findings of the lower authority. He submits that the appellant has not provided proper documentary evidence at the time of adjudication and now he is agitating all the issues before the Tribunal. He also reiterates the detailed Grounds of Appeal to canvas that the Adjudicating authority was in error in dropping the demands. He prays that the

appeal filed by BSNL may be dismissed and the appeal of the Revenue may be allowed.

10. Heard both sides and perused the appeal papers and the documentary evidence placed before us.

11. We find that the appellant is a reputed Public Sector Undertaking, providing essential service in the field of communication through out India. We find that the Tribunals have been consistently holding that Cenvat cannot be denied on the sole ground that the photocopies of the Invoices on the basis of which the Cenvat Credit has been taken. The Tribunal vide the Final Order No. 76125/2024 dated 11th June 2024 has held as under:-

> *9. After hearing both sides, we find that in respect of the Cenvat Credit claimed on Photocopy of Invoices, there is no allegation in the entire Show Cause Notice that the Appellant has not received the goods in question. Further, as submitted by the Learned Chartered Accountant, they have been properly recording the Cenvat Credit taken in the ST-3 Returns and filing the same with the Jurisdictional authorities. Therefore, we find that there was no case for the Department to issue the Show Cause Notice by invoking the extended period without going into the merits of the case, we allow the same on account of limitation.*

12. In the present case, it is not the case of the Revenue that the goods/services in question were not procured by the appellant or were not used by them in providing the output services. It is also not the case of the Department that the appellant has taken the credit twice i.e. once on the basis of original invoice and once on the photocopies of the invoice. Considering the factual details and documentary evidence and the ratio of the cited case laws, we set aside the demand of Rs.2,61,10,227/- [Sl No.1 of the above Table]

13. Coming to the demand of Rs. 1,56,76,605/-, wherein the demand has been made without specifying the classification under which the service is taxable, the Tribunals and Courts have been consistently holding that prior to 01/07/2012, the Revenue was bound to specify the proper classification of the service under which the demand is being made. Unless, the same specified in the Show Cause Notice, the assesse cannot properly defend the case. Since no bifurcation has been given towards this demand, we find that principle of natural justice have not been fulfilled. In case of **Dr. LaL Path Lab Pvt. Ltd. Vs. Commissioner of Central Excise, Ludhiana [2006 (4) STR 527 (Tri.-Del.)**, the Tribunal has held as under:-

> ***12.*** *It is well settled that once there is a specific entry for an item in the tax code, the same cannot be taken out of that specific entry and taxed under any other entry. In the present case, revenue is seeking to discard the specific entry and to bring the appellants' services under a very general entry, only because under the specific entry no tax is payable. This approach is contrary to the scheme of the legislation. What is specifically kept out of a levy by the legislature cannot be subjected to tax by the revenue administration under another entry.*

14. The above Tribunal decision was affirmed by P & H High Court in the case of **Commr. of Central Excise, Ludhiana Vs. Dr. Lal Path Lab (P) Ltd., [2007 (8) STR 337 (P & H)]** holding as under:-

> ***8.*** *A perusal of the afore-mentioned provision makes it clear that the expression 'technical testing and analysis' does not include any testing or analysis service provided in relation to human being or animals. The explanation goes to the extent of excluding from the afore-mentioned definition, a testing or analysis for the purposes of determination of the nature of diseased condition, identification of a disease, prevention of any disease or disorder in human beings or animals. Such being the statutory provision, we do not entertain any doubt that merely because any incidental service is rendered by the assessee-respondent like putting across or dropping of the name of the principal company, it would become part of the definition of 'Business Auxiliary Service' within the meaning of Section 65 (19) (ii) of the Act. The view taken by the Tribunal is unassailable and deserves to be upheld.*

15. In view of the above observation, we set aside the demand of Rs. 1,56,76,605/-.[Sl No.7 of the above Table]

16. In respect of the confirmed demand of Rs. 3,64,01,408/- for the period October 2003 to February 2005, we find that the appellant has correctly pointed out that Inter Usage Charges have come into tax bracket only after passing of the Finance Bill, 2007. The demand is for the period October 2003 to February 2005. We find that apart from the consideration under this heading, some other amounts have been received on services like Leased Circuit Line, Telegram Service, Internet Charges etc. which are also part of this demand of Rs. 3,64,01,408/-. The appellant would get benefit in respect of the demand pertaining to Service Tax demand in respect of the consideration received on account of IUC alone. The Adjudicating Authority should get the fact verified and demand in respect of other miscellaneous services mentioned at Serial No. 10 of the above Table, is required to be properly quantified, which is to be paid by the appellant.

17. We also find a considerable force in the argument of the appellant that since they have not charged the Service Tax on their clients, they should be given the benefit of cum-tax-benefit in terms of Section 67(2).

18. We are remanding the issues pertaining to Serial No.2 to 6, 8 & 9 to the Adjudicating Authority for proper quantification of the demand. The Appellant is given an opportunity to produce all the documentary evidence in defence of their claim. The Adjudicating authority should also give the benefit of cum-tax in terms of Section 67(2).

19. We also find that being a Government of India Public Sector undertaking, the appellant could not have any willful intention to evade the payment of Service Tax. It is not disputed that they have not charged any Service Tax in view of their bonafide belief that these are not exigible to Service Tax. Considering these facts, we hold that the confirmed demand for the extended period is not legally sustainable and is hit by time bar.

20. We set aside the confirmed demand for the extended period in respect of all the 10 issues covered under the above Table, on account of time bar.

21. To summarize:-

(a) In respect of Serial No. 1, 7 & 10 [ICU portion], the issue stands allowed on merits.

(b) In respect of all the issues in the above Table, the confirmed demand for extended period stands set aside.

(c) The normal period demand in respect of Serial No. 2 to 6, 8 & 9 are required to be re-quantified for the normal period, based on the documentary evidence to be submitted by the appellant, after due verification by the adjudicating Authority after granting the benefit of cum-tax benefit under Section 67(2).

(d) In case the appellant has paid any excess Service Tax, the same is required to be adjusted against the net Service Tax payable by the appellant.

(e) All the penalties is set aside.

22. The appeal filed by the assessee BSNL stands partly allowed on above terms. The appeal filed by the Revenue stands dismissed.

(Dictated and pronounced in the open court.)

Sd/-	**Sd/-**
(K. Anpazhakan)	**(R. Muralidhar)**
Member (Technical)	**Member (Judicial)**

Pooja