**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Tax Case No. 47 of 2016**

Bharat Sanchar Nigam Limited, G.M.T.D., Fafadih, Raipur, Distt. Raipur, Chhattisgarh, Through: Its Senior Accounts Officer, Shri S.K. Sahayata, S/o Late Shri Mulji Bhai, Aged About 58 Years, Office Of G.M.T.D., B.S.N.L., Raipur, Chhattisgarh.

**-----Appellant**

**Versus**

1. Customs Excise and Service Tax Appellate Tribunal, Through its President, West Block No.2, R.K. Puram, New Delhi.
2. Commissioner, Central Excise & Customs, Central Revenue Building, Raipur, Chhattisgarh.

**---- Respondents**

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| For Appellant | : | Shri Shrawan Agrawal, Advocate. |
| For Respondents | : | Shri Vinay Pandey, Advocate. |

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**Hon'ble The Chief Justice**
**Hon'ble Shri Justice P. Sam Koshy**

**Order On Board**

**Per, Thottathil B. Radhakrishnan, CJ**

**30/03/2017**

1. We have heard learned counsel for the Appellant-BSNL in this petition under Section 35-G of the Central Excise Act, 1944. We have also heard the Standing Counsel for the Department.
2. The Appellant-BSNL suffered an adverse order which can be treated as original order of the Commissioner. Thereafter, an addendum order was issued adversely to the interest of the Appellant. Appeal challenging the original order and addendum order was carried to the Customs, Excise and Service Tax Appellate Tribunal (in short, CESTAT). Through the order impugned, the CESTAT had proceeded as if the Appellant does not challenge the initial order or the original order and is aggrieved only by the addendum order. The

addendum order has been held to be passed after the Commissioner had become functus officio upon the issuance of the original order. Resultantly, the penalty and other actions taken through the addendum order were set aside in so far as it was against the interest of the Appellant. This was also done on the premise that the original order was not under attack.

3. We have perused the grounds of appeal raised in the appeal instituted before the CESTAT. Those grounds made by a public sector undertaking, dealing with public funds, are clearly or on the correctness of the Commissioner's original order as well. Having considered the contentious issue of appeal memorandum filed before CESTAT and the views expressed in the impugned final order dated 03.09.2015 by the CESTAT, we are of the opinion that the Appeal before the CESTAT ought to have been considered also as against the original order issued by the Commissioner. We do not see that this is a case of abandonment of the appeal against the original order, by the BSNL.
4. For the aforesaid reasons, we vacate the impugned final order of CESTAT issued on 04.11.2015 to the extent it refuses to adjudicate the Appeal filed by the Appellant challenging the original order issued by the Commissioner. Following this, the CESTAT will list that Appeal for consideration on merits in so far as it relates to challenge against the final order issued by the Commissioner.
5. The parties are directed to mark their appearance before the CESTAT on 27.04.2017 so that appropriate date of hearing could be notified to the parties on that date.
6. Ordered accordingly.

Sd/- Sd/-

(Thottathil B. Radhakrishnan)
**Chief Justice**

(P. Sam Koshy)
**Judge**

inder