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HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 2 of 2018

- Bharat Sanchar Nigam Limited G.M.T.D. Fafadih, Raipur, District Raipur, Chhattisgarh, Through Its Senior Accounts Officer, Shri S.K.Sahayata, S/o Late Shri Mulji Bhai, Aged About 59 Years, Office Of G.M.T.D. B.S.N.L., Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

---- Appellant

Versus

1. Customs Excise And Service Tax Appellate Tribunal, Through Its President, West Block No.2, R.K.Puram, New Delhi, District : New Delhi, Delhi

2. Commissioner Excise And Customs, Central Revenue Building, Raipur, District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

---- Respondent

For Appellant	Shri Sandeep Dubey, Advocate.
For Respondents	Shri Maneesh Sharma, ADvocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

18/01/2018

1. Heard.

2. In a dispute in respect of payment of service tax for the period 1994 to 2000, a final order was passed against the appellant by the Commissioner of Central Excise and Customs, Raipur on 09.08.2001 holding that:

> "(i) Service Tax on telephone services was made effective from 1st July, 1994 and, therefore, there was no question of payment of service tax on bills of July, 1994.
>
> (ii) Service Tax is not leviable on the amount of surcharge collected for delayed payment of telephone bills.

(iii) Interest on delayed payment of Service Tax @ 1.5% for every month or part of a month by which crediting of Service Tax is delayed should be calculated and paid by the noticee excluding the telephone bills of July, 1994 and surcharge on delayed payment of Service Tax as discussed in sub para (i) and (ii) above.

With the aforesaid observations, show cause notice was withdrawn and the proceedings were dropped."

3. The above said order was amended on 27.09.2001 and eventually the matter travelled up to the Customs, Excise and Service Tax Appellate Tribunal ("CESTAT"), which was disposed of on 21.02.2006 in Appeal Case No. 516 and 517 of 2006 without adjudicating the issues raised by the appellant on merits. The said order was assailed before the High Court in TAXC No. 54 of 2009 which was decided on 8th December, 2009 remitting the matter back to the CESTAT with direction to hear the appeal on merits after condoning the delay in filing by appeal. On remit, the Tribunal decided the matter on 03.09.2015 without going into the details of the case by observing that since the appellant is not contesting primary adjudication order dated 09.08.2001, the validity of the said order need not to be gone into. Thereafter, the matter again came up before this Court in TAXC 47 of 2016 and yet again the matter was remitted back to the CESTAT for decision on the appellant's appeal on merits in so far as it relates to challenge against the final order by the Commissioner.

4. By the impugned order, the Tribunal has once again refused to decide the matter on merits on the ground that the matter in issue earlier decided by the Tribunal is under challenge before the Allahabad High Court, therefore, liberty is allowed in favour of the appellant to come again after having the verdict of the High Court of Allahabad.

5. It is argued that even if there is no final adjudication of the merits of the case, the recovery is looming large over the appellant which can be executed at any point of time and the appellant has been left remediless during the interregnum.

6. Shri Maneesh Sharma, learned counsel for the Revenue would not dispute the fact that the recovery against the appellant still subsists.

7. Having heard learned counsel for the parties, we deem it appropriate to remit the matter back to the CESTAT for keeping the appellant's appeal pending till the matter is adjudicated by the Allahabad High Court and in the meanwhile, the said recovery against the appellant is kept in abeyance.

8. Accordingly, the impugned order dated 28.6.2017 is set aside and the matter is remitted to the CESTAT for keeping the appeal pending.

9. The appeal is allowed to the extent indicated above.

Sd/-	Sd/-
Judge Prashant Kumar Mishra	Judge Ram Prasanna Sharma

Akhilesh