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Planning & Taxation,  
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Chennai 600 202.  
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भारत संचार निगम लिमिटेड  
(भारत सरकार का उपक्रम)  
BHARAT SANCHAR NIGAM LIMITED  
(A Govt. of India Enterprise)

No. TAX/30-51/Ser.Tax/2011-12/8

dated at Chennai the 12-07-2011

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The IFAs

O/o PGM/GM,

SSA: Coimbatore/Coonore/Cuddalore/Dharmapuri/Erode/Karaikudi/Kumbakonam/  
Madurai/Nagercoil/Pondicherry/Salem/Thanjavore/Trichy/Tirunelveli/TUTICORIN  
Vellore and CMTS, Trichy, VIRUDHUNAGAR.

Sub: Payment of Service Tax on Free Calls and Rent Free Telephone Connections  
provided to the employees of BSNL – reg.,

It is learnt the Tax Authorities have written to various SSAs with regard to the practice followed in BSNL on payment of Service Tax on free calls/rentals against telephone connections provided to BSNL employees and if the service tax is not paid and the reasons for the same.

In this connection, it is intimated that the matter was discussed in the 2<sup>nd</sup> Regional Advisory Committee Meeting of Central Excise and Sales Tax officers for the Block years 2009-10 held on 17-12-2009 at Madurai (Minutes enclosed). In the said meeting to a query raised by BSNL on the subject matter, it was replied by Excise Authorities, that for such calls BSNL is not receiving any payments as stipulated in Service Tax (Determination Value) Rules. Hence, as per the Trade Notice no. 15/2009 dated 13.03.2009, it was suggested for closure of para since the free calls provided by BSNL would not be treated as consideration for the service provided. **As such the free calls provided to their employees cannot be treated as service rendered by BSNL to their employees.**

In the light of the above, IFA's are requested to take necessary action by giving suitable reply to the Excise Authorities against the notices received on the subject matter.

(T.K. ANANTHAKRISHNAN)

Deputy General Manager (P&EF)

O/o CGM, TN Circle, Chennai-2.

Encl: as above.

CAO Comp.



OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE  
Central Revenue Building, B.D.Kulam, Madurai-625002.  
Ph. No. 0452-2632481 to 7 Fax No. 0452 - 2630297

(15) copy to CAO (F) & CAO (T) for file  
for 10/10  
25.1.10

C.No.IV/16/70/2009-Tech.

Dated 12.01.2010

MINUTES OF THE 2<sup>ND</sup> REGIONAL ADVISORY COMMITTEE MEETING FOR THE  
BLOCK YEARS 2009-2010 HELD ON 17.12.2009

The second Regional Advisory Committee Meeting for the block years 2009-2010 was held on 17.12.2009 at 1530 hrs at the Office of the Commissioner of Central Excise, Madurai under the Chairmanship of Shri C. Rajendiran, I.R.S., Commissioner of Central Excise, Madurai.

2. The following members and Officers of the department attended the meeting.

Sl.No.	S/Shri
01.	S. Rethinavelu, Vice-Chairman
02.	K. Venkatachalam, Member
03.	M.A.C.S. Ravindran, Member
04.	P. Sitaraman, Member
05.	N. Somasundaram, Member
06.	S. Gopi, Member
07.	K.C. Gurusamy, Member
08.	A. Arunachalam, Member
09.	A.K. Raghunathan, I.R.S., Additional Commissioner
10.	A.S. Meenalochani, I.R.S., Joint Commissioner
11.	J.R. Madhiam, I.R.S., Deputy Commissioner
12.	M. Chandrasekaran, Superintendent (Tech)
13.	I. Thiruvettai, Superintendent (Tech)
14.	R. Thangappan, Superintendent (Service Tax)

2. S/Shri N.Jegatheesan, V.Necthi Mohan, R. Prabhakaran, and N.Senthilnathan, Members were not present.

3. The Chairman welcomed all the members present. Chairman requested that the industry in general and the members in particular should actively participate in the implementation of ACES programme; as the whole modernization is designed with the industry and Trade in mind. Such active participation will make the automation a success and will reduce the burden of the assesses from actually going to the Officers thus, saving their precious time which can be utilized for improvement of their business.

Chairman also requested the members that instead of waiting for the intimation of RAC, they may write their problems as and when it arises in their mind. They may either contact the nearest Range / Divisional Officers for sorting out their problem or may write to the Headquarters Office if the same cannot be sorted out at the field formations.

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IN SETEX RUDRY FILE

The Chairman took up the points raised by the members for discussion and reply.

Points raised by Shri S. Rethinavelu, Senior President, Tamilnadu Chamber of Commerce:-

Central Excise:-

Point No.1:- The Paper Mills are at present availing quantity based exemption under Notification No.4/2006 CE dt.01.03.2006 (Sl.No.90 in the table). The condition for the exemption in the Notification is that, "Paper & Paper Board or articles made therefrom manufactured starting from the stage of pulp, in a factory, and such pulp contains not less than 75% by weight of pulp made from materials other than bamboo, hard woods, soft woods, reeds (other than sarkhandh) or rags and subjected to the condition imposed in the Sl.No.10 of the Annexure to the said notification. The problem faced by the Paper Mills is that, two years back the CERA has raised an objection that the mills are using waste paper for their production and not using pulp for the production of paper. The Audit Officer did not understand from which material the pulp is produced. The paper mills cannot purchase pulp for production of their paper. They can make pulp from the unconventional raw materials for availing the exemption. Moreover, the paper mills are availing similar exemption for the two decades using the same process and have enjoyed the identical exemption in the past also. Based on CERA objection, the paper mills are frequently / periodically receiving Show Cause Notices from the Dy.Commissioner of Central Excise or as the case may be from the Addl.Commissioner of Central Excise demanding duty on the paper removed. This type of Show Cause Notice increases the financial burden of the paper mills. If these demands are confirmed it would mean that no paper mill using conventional raw material can avail the quantity based exemption for the first clearances of 3500 MTs for home consumption in a financial year. The paper mills have been informed by the previous officials that, the matter has been referred to CERA for closure of audit objection. But till date the paper mills are receiving such Show Cause Notices. Every day the burden increases since the matter has not yet been clarified.

REPLY:-

The above objection has been contested by the Department and CERA has informed vide their letter dated 06.10.2009 that further communication would be sent by their Office. As the same is still awaited, DC, Dindigul-II Division has sent further letter to CERA on 23.11.09 for which no reply has been received. This is a policy matter raised by CERA and till such time a decision is taken by the CERA, the status quo will be continued. However, the Chairman directed that a meeting may be arranged with CERA on this issue in particular and in sorting out the issues in general. Reference also should be made to other Commissionerates to ascertain the practice followed where such units are located.

Action:- I.A.D., Hqrs.Office  
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Point No.2:- The Rule 16A of Central Excise Rules, 2002 allows removal of inputs received in a factory as such or being partially processed to a job worker for further processing, testing, repairing, reconditions or any other purposes subjected to the fulfilling of conditions specified in this behalf by the Commissioner of Central Excise having jurisdiction. In this connection, the Chairman's kind attention is invited to the Trade Notice No.13/2006 dt.31.08.2006 issued by the Commissioner of Central Excise, prescribed and a general permission has been granted to the manufacturers for removal of inputs to job work. Whereas in the Madurai and Tirunelveli Commissionerates, no such Trade Notice has been issued by the Commissioner.

The manufacturers find difficult to remove their inputs for job work under this Rule 16A in absence of a general permission. The difficulty may please be removed by issuing a Trade Notice prescribing the procedure to be followed.

REPLY:-

A Trade Notice will be issued from this Commissionerate within a short span of time. accordingly

Action: Tech.Section, Hqrs.Office

II. SERVICE TAX

Point No.1:-The small service providers face difficulty as the Range Officers are insisting for penalty of Rs.200/- per day or at the rate of 2% per month whichever is higher, in the case of delay in payment of service tax as per the provisions of Section 76 of Finance Act, 2004 eventhough the service providers have paid the delayed amount with interest @ 13%. For example, a small dealer is liable to pay service tax of Rs.500/- for a month. Instead of paying service tax on 5<sup>th</sup> of the subsequent month, he had paid the service tax on 7<sup>th</sup> i.e. two days delay. However, interest @ 13% has been paid. For this two days delay the Range Officer has refused to accept the return without payment of penalty under this Section 76. Kindly clarify whether such penalty is inevitable eventhough the service tax has been paid with interest before receiving a notice from the department. Kindly help the small service providers.

REPLY:-

When the assessee has not paid Service Tax, he may be served with Show Cause Notice under Section 73 of Finance Act, 1994. When there is no suppression, he is at liberty to pay on his own assessment along with interest before the issue of Show Cause Notice. The service of Show Cause Notice in such cases will be dispensed with in terms of Section 73(3) of Finance Act, 1994. However, there is no provision to deny the receipt of return on the ground that the assessee has not paid service tax on the due date and the penalty imposable under Section 76 for said failure. Imposition of penalty under Section 76 shall be preceded by following up of principle of natural justice which powers are not vested with the Range Officer.

Action: All Range Officers

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Points raised by Shri A. Arumugham, BSNL:-

Point No. 1:- Non-payment of Service Tax on free calls provided to employees / staff of BSNL:- M/S.BSNL is providing Free Calls to its employees as a benefit as well as in the interest of the Company. Since the BSNL employees are bound to serve the company even after the Office hours (i.e.) from residence, they are given free calls. It is just like Office phone extended to the residence of the employees.

Similarly, giving free calls to the retired employees is only a benefit given to them without any consideration in any form. As per Sub-section(1) of Section 67 the service should be provided for in:

- > Consideration in Money
- > Consideration not wholly or partly consisting of Money (ie) consideration in any other Form
- > Consideration which is not ascertainable.

Thus, giving free calls to the retired employees does not fall under any of the above category as it is purely a benefit given to them without any consideration in any form to M/s.BSNL.

Further, it is to say that we offer various Plans / Schemes to our Customers with different levels of free calls for which we do not collect value as a Sales Promotion measure. Thus, the free calls given to serving / retired employees are one such Plan / Scheme executed as per Corporate Office Policy. This is w.r.t. our Office letter No.BSNL/RAC/2009-10 dated 24.09.09 & 13.10.09.

Thus, in light of the above points, it is pleaded that no Service Tax is payable on free calls provided to employees / staff of BSNL.

REPLY:-

BSNL provides different quantum of free calls to their customers based on their utility of BSNL service. There is no dispute over the valuation of such free calls which are, sometimes, more than that of an ordinary customer. BSNL provides similar concession akin to that of special class of customers to their retired employees in recognition of their services to BSNL. The payments made towards the bill to BSNL have never been partly paid in cash and the rest in kind.

BSNL have extended more free calls to the working employees in order to utilize their service to their customers even beyond office hours. BSNL placed some restriction upon the utility just to maintain checks and balances against the misuse of free calls. The free calls are not only provided to the employees but almost all subscribers in India. For all such calls, BSNL is not receiving any payment as stipulated in Service Tax (Determination Value) Rules. Hence, as per the Trade Notice No.15/2009 dated 13.3.2009, it was suggested for closure of para since the free call provided by BSNL would not be treated as consideration for the service provided. As such the free calls provided to their employees cannot be treated as a service rendered by BSNL to their employees.

The close reading of Rule 3 of Service Tax (Determination of Value) Rules, 2006 reveals about only the payment partly made in cash and the rest in kind. Only in

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In such situations, the provisions of the said Rule can be applied. In the above two occasions, no allegation / objection has been raised by the Audit that the payments made by either the working employee or the retired employee are partly in cash and the rest in kind towards the taxable value raised by BSNL. As such, the para does not merit sustainability.

Point No.3:- Input Service Tax Credit On Service Tax On Commission Paid To Postal Authorities For Collection Of Telephone Bills:- BSNL is utilizing the service of Postal Authorities for collection of Telephone Bills from the Customer against the commission of Rs.5/- per bill. The Postal Authority has undertaken this activity of collection of bills from BSNL customers through a separate agreement. The Postal Authorities are also collecting Service Tax from BSNL for the above commission under the category of Business Auxillary Service. The Central Excise Department is consistently objecting to utilize the above amount as Input Service Tax Credit under the notion that the collection of telephone bill by Post Office is a post service activity and therefore cannot be treated as Input Service.

It is submitted that BSNL is utilizing the Service Tax on Commission paid to the Postal Authorities as Input Service Tax Credit in the following justifiable grounds:  
I. Rule 2(1)(1) of CENVAT Credit Rule, 2004 defines the term 'Input Service' in two parts viz., the specific part and the inclusive part.

The Specific Part:

Rule 2(1)(1) states that 'Input Service' means any service used by a provider of taxable service for providing an Output Service.

The Inclusive Part:-

Rule 2(1)(1) further states that the term 'Input Service' will include services used in relation to setting up, modernization, renovation or repairs of the premises of the output service provider or an office relating to such premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as - accounting, auditing, financing, recruitment, quality control, coaching and training, computer networking, credit rating, share registry, security, inward transportation of inputs / capital goods and outward transportation upto the place of removal.

In respect of 'activities relating to business', the use of expression 'such as' indicates that only certain illustrative activities have been mentioned. Thus, the inclusive part of definition enlarges the scope of CENVAT credit benefit to the activity of collection of bills from BSNL subscribers which is directly related to the business.

II. It is submitted that the services rendered by BSNL to its customers are not limited to provision and maintenance of telecommunication service. BSNL is

rendering service from the time of installation of the telephone to the time of closure of service. In this process of rendering output service, the BSNL is utilizing various input services such as security, repairs and maintenance service, courier, Advertisement, marketing, collection of bills through post offices etc. All these services are directly or indirectly related to the provision of output services by BSNL to the Customers.

Normally a BSNL customer remits the Telephone Bill to the Post Office and in turn such Post Office will send the amount alongwith the Voucher to BSNL office for updation of payments in the Customer Master, so that his / her phone connection shall not be disconnected for non-payment. Thus, for continuation of service to a customer, the Post Office has to timely inform the Customer's payment to BSNL, hence it is evident that the collection of Telephone Bill by a post office is not a Post service activity, but it is a service directly related to the Output service.

Honourable Commissioner (Appeal), Salem has passed an Order-in-Appeal No.122/2009-S.T.(SLM) dated 12.08.2009, allowing the Service Tax on commission paid to Postal Authorities as eligible CENVAT credit in the similar case in our Erode SSA.

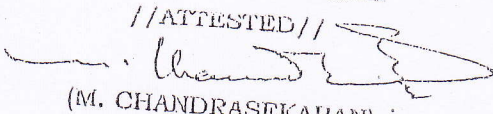
REPLY:-

It is a policy matter to decide whether the Service Tax paid by the postal authorities can be construed as input service or not. The practices prevailing in other Service Tax Commissionerates will be obtained and a decision will be taken.

Action: Service Tax Section, Hqrs.office.

As there was no other point for discussion, Chairman thanked the members of the Committee and the meeting came to a conclusion.

//ATTESTED//

  
(M. CHANDRASEKARAN)  
SUPERINTENDENT(TECH)

Sd/-  
(A.S. MEENA LOCHANI)  
JOINT COMMISSIONER(TECH)

To  
All the RAC Members.

Copy submitted to:-

1. The Chief Commissioner of Central Excise & Service Tax, Coimbatore.
2. The Director General of Inspection, (DGIC & CE), 5<sup>th</sup> Floor, D-Shape Bldg., I.P.Bhawan, New Delhi (4 copies).
3. The Deputy Director of Inspection (Cus & CE) SRU, 5<sup>th</sup> Cross Street, CIT Colony, Chennai.
4. All the Central Excise Commissioners.
5. The Additional Commissioner, Hqrs.office, Madurai.

Copy to :-

1. All Divisional Deputy / Assistant Commissioners of Central Excise.
2. All Superintendents of Central Excise in-charge of Ranges.
3. The CAO / PAO / Audit / HPU / Service Tax / Review / Legal / Adjn. / Vigilance Sections / PS to Commissioner / Steno to ADC / Steno to JC, Hqrs.office, Madurai.