CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH: ALLAHABAD

DIVISION BENCH

ST/1299/2011-CU(DB) and ST/3008/2012-CU(DB)

Date of Hearing/Decision: 17/8/2017

[Arising out of Order-in-Appeal No.102/ST/APPL/NOIDA/11 dated 27.05.2011 passed by Commissioner (Appeals), Customs, Central Excise and Service Tax, NOIDA, Order-in-Appeal No. 292-ST/LKO/2012 dated 28.06.2012 passed by Commissioner (Appeals), Central Excise and Service Tax, Lucknow]

1. Vipin Kumar Contractor
2. Kunj Lub Marketing Pvt. Ltd. Appellant

Vs.

1. C.C.E. –NOIDA
2. C.C.E. & S.T.-Lucknow Respondent

Appearance:

Present for the Appellant: Shri Hari Om Kesharwani (Advocate), Written Submission
Present for the Respondent: Shri Sandeep Kumar Singh (Dy. Commissioner) A.R.

Coram: Hon'ble Shri Anil Choudhary, Judicial Member
Hon'ble Shri Anil G. Shakkarwar, Member (Technical)

Final Order No.70801-70802/2018

Per: Anil Choudhary

The present appeals are filed by the appellants against the impugned order in appeal.

2. The appellants are engaged in trading activity of various products of BSNL including SIM Cards, pre-paid connections, cash card, etc. M/s

BSNL appointed the appellant as its authorized distributor by entering into a franchisee agreement with the appellant.

3. After going through the facts on record of the present appeal and we find that the issue herein is settled by various judgment of this Tribunal. By following the Final Order No. 71172/2016-SM[BR] dated 26/12/2016 in Appeal No. ST-1871/2010-SM of this Tribunal in the case of I.T.I. Limited, Kanpur as held in Paragraph 6 of to this appeal, which is as follows:-

> *"Having considered rival contentions and submissions through Cross-objection, I find that Revenue in its ground of appeal has given breakup of the price at which the ultimate customer purchases the SIM Card as Rs.331/- and admitted that BSNL pays Rs.31/- as Service Tax on the same. Revenue further contended that the respondent receiving SIM Card at Rs.316/- which is Rs.285+Rs.31/- service tax paid and balance amount of Rs.15/- is retained by the respondent as commission. I find that this clearly means that for Rs.31/- service tax, assessable value is Rs.300/- which is inclusively Rs.285/- paid to BSNL and Rs.15/- retained by the respondent. Therefore, I find that the commission received by the respondent is already subjected to Service Tax at the hands of BSNL. Therefore, I find no merit in the ground of appeal submitted by Revenue. I, therefore, dismissed the appeal filed by Revenue. The cross objection also stands disposed of."*

4. We find that the issue is no more res-integra, since the same has been decided by this Tribunal through the Final Order No.

71172/2016 dated 26.12.2016 in Appeal No. ST-1871/2010-(SM), in the case of Commissioner of Central Excise, Kanpur Vs. ITI Ltd., Kanpur. In the said appeal this Tribunal has found that the sales commission paid to the respondent, is part of the assessable value on which BSNL has already paid Service Tax. In view of the same, this Tribunal has held that "The Commission received by the respondent has been already subjected to Service Tax at the hands of BSNL". The fact of the said case is squarely applicable in the present cases. We, therefore, set aside the impugned orders and allow the appeals. The appellants shall be entitled to consequential benefits.

(Dictated and Pronounced in the open Court)

(ANIL G. SHAKKARWAR)	**(ANIL CHOUDHARY)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

(K. Gupta)