IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/71115/2018-CU[DB]

(Arising out of Order-in-Appeal No. 203/ST/Appeal/Audit LKO/2018 dated 28/03/2018 passed by Commissioner (Audit) Central Goods, Service Tax & Central Excis, Lucknow)

M/s MKG Computers Private Limited **Appellant**

Vs.

The Commissioner (Audit) GST, Customs & Central Excise,

Lucknow **Respondent**

Appearance:

Shri Dharmendra Srivastava, Chartered Accountant, for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 27/02/2019

FINAL ORDER NO. **70750/2019**

Per: Anil G. Shakkarwar

After hearing both the sides duly represented by Shri Dharmendra Srivastava - ld. Chartered Accountant appearing on behalf of the appellant & Shri Sandeep Kumar Singh – ld. Deputy Commissioner appearing on behalf of the Revenue, we note that the appellants were engaged in trading of Computers and its allied products. They received incentives in lieu of sale of the said products from various companies manufacturing the said products. The said incentives were shown in their Books of Account as "Incentives, Commissions

& Discounts". Therefore, it appeared to Revenue that the said amount received by the appellant was consideration for providing Business Auxiliary Service. Therefore, through a Show Cause Notice dated 20.10.2014 issued for the period from 2009-10 to 2013-14, a demand of Service Tax amounting to Rs.40,16,011/- was raised against the appellant. Further, in terms of provisions of Section 73(1A) of the Finance Act, 1994, a statement dated 18.04.2016 for the period from 2014-15 was issued giving reference to earlier Show Cause Notice dated 20.10.2014 raising a demand of Service Tax amounting to Rs.12,13,087/- on the same grounds as stated in earlier Show Cause Notice dated 20.10.2014. After hearing both the side and on perusal of the facts on record, we note that the proceedings initiated through earlier Show Cause Notice dated 20.10.2014 culminated into passing of Order-in-Appeal No. 232-ST/APPL/LKO/2018 dated 27.03.2018. In the said Order-in-Appeal, ld. Commissioner (Appeals) has held that the appellant was a dealer in electronic goods manufactured by various companies like – APPLE, ACER and that the appellant purchased the goods from National Distributor of said Manufacturers and resold the same in the market and that all the Incentives, Commissions & Discounts received by the appellant were based on volume of sale effected by the appellant and therefore, the said consideration was in respect of sale and purchase transaction and therefore, there was no ground to charge Service Tax on the said Incentives. We, further, note that the said statement of demand dated 18.04.2016 culminated into passing of impugned Order-in-Appeal dated 28.03.2018. The ld. Commissioner (Appeals) had upheld the confirmation of Service Tax for the Financial Year 2014-15, where proceedings were initiated through said statement of demand dated 18.04.2016. Now, we note that the said statement of demand dated 18.04.2016 was based on the grounds stated in the earlier Show Cause Notice dated 20.10.2014 and the said grounds were found to be unsustainable by ld. Commissioner (Appeals) in said Order-in-Appeal dated 27.03.2018. We, therefore, do not find any merit in the present impugned Order-in-Appeal dated 28.03.2018. We, therefore, set aside the same and allow the appeal.

(Dictated in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Ansari