REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 24/11/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70062-70063/2015- dated 15/10/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

SPS 27/11
Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	ST/1538&1722/2010	BALAJI TRADERS ARYA KANYA PATHSALA ROAD HARDOI(UP)
		VISHAL VIDEO & APPLIANCES SUPER SHOPPING CENTRER, SANJAY GANDHI PURAM, LUCKNOW.

Name and Address of Respondent	CCE LUCKNOW 7-A, ASHOK MARG, LUCKNOW

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): SH VINEET KUMAR SINGH,CA
5, NARAIN NAGAR
SECTOR 11, INDIRA NAGAR
LUCKNOW.

4 Bar Association, CESTAT, Delhi
5 Director Publications, Customs, Excise, I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 58

13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL REGIONAL BENCH AT ALLAHABAD

Appeal No. ST/1538 & 1722/2010

(Arising out of Orders-in-Original No. 23/COMMR/LKO/2010 dated 01.09.2010 and No. 22/COMMR/LKO/2010 dated 27.08.2010 passed by the Commissioner of Central Excise & Service Tax, Lucknow)

For approval and signature:

Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri Raju, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	:	Seen
4.	Whether order is to be circulated to the Departmental authorities?	:	Yes

M/s Balaji Traders
M/s Vishal Video & Appliances Pvt. Ltd. — Appellant

Vs.

Commissioner of Central Excise & Service Tax, Lucknow — Respondents

Appearance:

Shri Vineet Kumar Singh, Advocate — for Appellant

Shri M.K. Mall, AC (AR) — for Respondent

CORAM:

SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)
SHRI RAJU, MEMBER (TECHNICAL)

Date of Hearing: 15.10.2015

Date of Decision: 15.10.2015

Final ORDER NO. 70062-70063/2015

Per: Anil Choudhary

These appeals are filed by the appellants against Orders-in-Original No. 23/COMMR/LKO/2010 dated 01.09.2010 and No. 22/COMMR/LKO/2010 dated 27.08.2010 passed by the Commissioner of Central Excise & Service Tax, Lucknow. The facts being similar, both the appeals are being taken up together for disposal.

2. The appellant, M/s Balaji Traders, is a reseller of SIM cards of BSNL. The appellants are in appeal against Order-in-Original dated 1.9.2010 by which a demand of Rs.51,84,366/- was confirmed with interest as being Service Tax liable on SIM cards and Recharge Coupons sold by the appellant, as an agent of BSNL. Further penalty of Rs.5000/- has been imposed under Section 77(1)(c) of the Finance Act and Rs.200/- per day till the date of taking registration under Section 77(1)(z) and further Rs.2 lakhs was imposed under Section 78 of the Finance Act.

3. The admitted facts are that the BSNL have paid the Service Tax on the gross value of the SIM cards and Recharge Coupons. In similar facts and circumstances, this Tribunal in *GR Movers Vs. Commissioner of Central Excise – 2013 (30) STR 634 (Tri-Del)* in view of the ruling of Hon'ble Supreme Court in the case of *Idea Mobile Communication Ltd. – 2011 (23) STR 433 (SC)*, has held that the transaction is not a sale of goods and further that transaction essentially being one and payment on full value of service having occurred earlier, the payment of commission (by BSNL) to the appellant and payment of taxes on full amount of services rendered by principal (BSNL) is easily verifiable unlike services

by other sub-contractors. Further Service Tax being destination based tax in a single point tax and accordingly, there is no double taxation on the reseller of SIM cards/recharge coupons once Service Tax is discharged by principal namely, BSNL. This Tribunal also took notice that Service Tax was exempted on sale of SIM cards and recharge coupons vide Entry No. 29 under Notification No. 25/2012-Service Tax. This Tribunal also considered issue of revenue neutrality, as whatever tax would have been paid by the dealers/appellant, the principal (BSNL) would have been entitled to take credit of the same. This order of the Tribunal was challenged by the Revenue before the Hon'ble Allahabad High Court, wherein the Hon'ble High Court dismissed the appeal observing that the issue is already decided in favour of the assessee in Central Excise Appeal No. 21 of 2013 reported at 2014 (34) STR J99 (All), the relevant portion is quoted below: -

> "After hearing learned Counsel for the appellant, we are of the opinion that no substantial question arises in the instant appeal, in view of the decisions of the Apex Court in the case of Martend Food & Dehydrates Pvt. Ltd. Vide Final Order dated 6.11.2012, wherein it was held that activity of purchase and sale of SIM card belonging to BSNL where BSNL has discharged the Service Tax on the full value of the SIM Cards does not amount to providing Business Auxiliary Service. Therefore, no intereference is called for.
>
> Accordingly, the appeal is dismissed at the admissions stage itself."

The order of the Allahabad High Court is reported at 2015 (37) STR J122 (All.). Accordingly, the learned Counsel prays for allowing of the appeals.

4. The learned AR appearing for the Revenue relies on the impugned orders.

5. Having considered the rival contentions, we find that the issue is no long *res integra* and the same is squarely covered in favour of the appellant by the Hon'ble Allahabad High Court in Commissioner of

Central Excise Vs. GR Movers (supra). Thus, the appeals are allowed and the impugned orders are set aside.

(Dictated and pronounced in Court)

Sd/-

(RAJU)
MEMBER (TECHNICAL)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित प्रति / Certified True Copy

सहायक पंजीकार / Asstt. Registrar
38, M. G. MARG, ALLAHABAD