REGISTERED / AD

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

To

Dated: 27/10/2015

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70038-70043 /2015- dated 18/09/2015

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.

Asstt. Registrar
28.10.15

Application	Appeal	Name and Address of Appellant
	E/1741-1746/2010	C.C.E.KANPUR, 117/7, SARVODAYA NAGAR, KANPUR
Name and Address of Respondent		P.K.KHANDELWAL & CO PADAM TOWER, 14/113, CIVIL LINES, KANPUR B.N.K. INVESTMENT PADAM TOWER, 14/113,CIVIL LINES, KANPUR PRAVEEN KUMAR & CO CABIN NO 23, PADAM TOWER, 14/113, CIVIL LINES, KANPUR AMAR & CO PADAM TOWER, 14/113, CIVIL LINES, KANPUR SUNIL BROTHERS PADAM TOWERS, 14/113, CIVIL LINES, KANPUR. ATUL KANODIA & CO PADAM TOWER, 14/113, CIVIL LINES, KANPUR.

Other Appellants and Respondents as per Annexure

Copy To

8 <u>Advocate(s) / Consultant(s)</u>: SH DHARMENDRA SRIVASTAVA, AEDV

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

17 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

18 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082
19 C.D.R. 20 Office Copy 21 Guard File

Asstt. Registrar
Regional Bench, Allahabad

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

Appeal No. ST/1741 to 1746/2010

(Arising out of Orders-in-Appeal No. 451 to 456-ST/APPL/KNP/2010 dated 9.9.2010 passed by the Commissioner of Central Excise & Service Tax (Appeals), Kanpur).

For approval and signature:

Hon'ble Shri P.S. Pruthi, Member (Technical)
Hon'ble Shri S.S. Garg, Member (Judicial)

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

Commissioner of Central Excise, Kanpur — Appellant

Vs.

M/s P.K. Khandelwal & Co. — Respondents
M/s B.N.K. Investment
M/s Praveen Kumar & Co.
M/a Amar & Co.
M/s Sunil Brothers
M/s Atul Kanodia & Co.

Appearance:

Shri Rajiv Ranjan, Jt. Commissioner (AR) — for Appellant

Shri Dharmendra Srivastava, C.A. — for Respondents

CORAM:

SHRI P.S. PRUTHI, MEMBER (TECHNICAL)
SHRI S.S. GARG, MEMBER (JUDICIAL)

Date of Hearing: 18.09.2015

Date of Decision: 18.09.2015

Final ORDER NO. 70038 - 70043/2015

Per: P.S. Pruthi

These appeals are filed by the Revenue against the impugned Orders-in-Appeal No. 451 to 456-ST/APPL/KNP/2010 dated 9.9.2010 passed by the Commissioner of Central Excise & Service Tax (Appeals), Kanpur.

2. The facts are that the respondents have Service Tax registration under the category of Stock Broker and worked as sub-broker of the main broker. They entered into a tri-partite agreement with the clients and the main broker. Under Section 65(103)(a) of the Finance Act, 1994 'taxable service' was the service provided by stock broker in connection with the sale or purchase of the securities listed in the recognized stock exchange. Under Section 65(101), during the period of dispute the definition of 'stock-broker' is a person, who is registered as a stock broker or sub-broker as the case may be in accordance with the Rules and Regulations of Securities & Exchange Board of India (SEBI). The case of the department is that the sub-broker arranged business for their principal broker and they issued contract note-cum bills to the ultimate clients. For the services rendered, the sub-brokers are paid brokerage/commission by the principal broker. Thus, it was held that the sub-brokers are liable to pay tax under the category of 'Stock Broker Services'. The adjudicating authority confirmed the demand of duty along with interest and imposed penalties under Section 77 and 78 of the Finance Act, 1994. However, in appeal proceedings, the Commissioner (Appeals) observed that the Service Tax was already paid on the total brokerage by the main broker. The taxable services cannot be taxed twice. He observed that SEBI vide its Circular dated 5.8.2005 prohibited sub-brokers to issue contract notes. Therefore, confusion remained from

the 10.9.2004 to 6.7.2009. Thereafter CBE&C excluded the sub-brokers from the purview of Service Tax by excluding the words "sub-broker" from the definition of Stock-broker w.e.f. 6.7.2009. Consequently, the Commissioner (Appeals) set aside the Order-in-Original demanding duty.

3. The main grounds of appeal by Revenue are that the leviability of tax on sub-broker has never been disputed. It was settled in the case of *M/s Unique Investment Centre Vs. Commissioner of Central Excise, Chandigarh – 2009 (13) STR 158 (Tri-Del)* that the activities of sub-broker will fall under the Business Auxiliary Services. Further, that even though Service Tax paid by the sub-broker may be available as CENVAT Credit to the main broker, this cannot be a basis of setting aside the legally sustainable demand. The concept of revenue neutrality applies only when the CENVAT Credit is available to the same assessee under the same unit or in another unit.

4. Heard the parties and considered the submissions.

5. The learned Counsel for the respondent brought to our notice that on directions of the Hon'ble Punjab & Haryana High Court, Larger Bench in the case of *Commissioner of Central Excise, Chandigarh Vs. M/s N.K. Chugh and Company – 2010 (18) STR 145 (P&H)* considered judgments in the case of *M/s Unique Investment Centre Vs. Commissioner of Central Excise, Chandigarh (supra)* and *Vijay Sharma & Co. Vs. Commissioner of Central Excise, Chandigarh – 2010 (20) STR 309 (Tri-LB)* as well as the CESTAT judgment in the case of *Commissioner of Central Excise, Kanpur Vs. M/s Baidyanath Securities,* vide Final Order No. 1088-1090/2012 dated 23.7.2012, The Larger Bench held as under: -

> *"8. The dispute in all the three references is on a narrow compass. There is no dispute by either side that a sub-broker is falling under the definition of stock broker under Section 65(101) of the Finance Act, 1994 w.e.f. 10-9-2004. The definition reads as under :-*

> *"(101) 'Stock-broker' means a person, who has either made an application for registration or is registered as a stock-broker or sub-broker, as the case may be, in accordance with the rules and regulations made under SEBI Act 1992".*

There is also no dispute by either side that when an application is made by a person for registration as a sub-broker or a person registered as such under SEBI Act 1992 read with the regulations made thereunder, shall be called as stock-broker. So also there is no dispute that in terms of Section 65(105)(a) of Finance Act, 1994 services provided to any person by a sub-broker or stock broker in connection with the sale or purchase of securities listed on a recognized stock exchange shall be taxable service from the aforesaid date. So also, a sub-broker who is registered or has made an application for registration as such under SEBI Act, 1992, is permitted to provide similar service as provided by a stock broker. The service so provided becomes taxable service under Finance Act, 1994 w.e.f. 10-9-2004. A sub-broker is thus liable to pay service for the nature of taxable service provided as defined by Finance Act, 1994 aforesaid.

***9.** It is true that there is no provision under Finance Act, 1994 for double taxation. The scheme of service tax law suggest that it is a single point tax law without being a multiple taxation legislation. In absence of any statutory provision to the contrary, providing of service being event of levy, self same service provided shall not be doubly taxable. If Service tax is paid by a sub-broker in respect of same taxable service provided by the stock-broker, the stock broker is entitled to the credit of the tax so paid on such service if entire chain of identity of sub-broker and stock broker is established and transactions are provided to be one and the same. In other words, if the main stock broker is subjected to levy of service tax on the self same taxable service provided by sub-broker to the stock broker and the sub-broker has paid service tax on such service, the stock broker shall be entitled to the credit of service tax. Such a proposition finds support from the basic rule of Cenvat credit and service of a sub broker may be input service provided for a stock-broker if there is integrity between the services. Therefore, tax paid by a sub broker may not be denied to be set off against ultimate service tax liability of the stock broker if the stock broker is made liable to service tax for the self same transaction. Such set off depends on the facts and circumstances of each case and subject to verification of evidence as well as rules made under the law w.e.f. 10-9-2004. No set off is permissible prior to this date when sub-broker was not within the fold of law during that period.*

***10.** In all the three references before us, it would be proper to send the matter back to the original authority, without being sent to the concerned Benches, to verify as to whether the stock-brokers have paid service tax on behalf of the sub-brokers and if so, reduce the demand on sub-brokers to that extent and pass fresh orders, granting fair opportunity of hearing to the sub-brokers. All the appeals are allowed by way of remand."*

6. We find that the facts and circumstances of the present case are similar. The Larger Bench remanded cases for verification of facts whether tax was paid by Stock-brokers. However, in the present case it is explicitly stated by the Commissioner (Appeals) in his order that "in the instant case, I find that there was no dispute that the Service Tax was paid on the total brokerages by the main broker. The main broker is registered with Central Excise Department and the tax paid by them has

been accepted by the department." In view of these facts, we do not find it necessary to remand the case. In fact, respectfully following the principle laid down by the Larger Bench, we hold that the tax is not payable by the sub-broker i.e. the respondents in the present case.

7. During arguments an issue came up that the services provided by the sub-broker may not be brokerage service. It was only a service which facilitates the work of the Principal Stock Broker and therefore would get covered under the category of Business Auxiliary Services. We reject this view for two reasons. The first reason is that this view also taken in the case of Vijay Sharma (supra), was finally settled by the Larger Bench decision referred above. Secondly, we find that the show-cause notice in this case was raised on the respondent classifying the service as Stock Broker Service. Therefore, it cannot now be stated that the demand is payable under the Business Auxiliary Services.

8. For the reasons enumerated above, we dismiss the appeal of the department.

(Dictated and pronounced in Court)

Sd/-
(S.S. Garg)
Member (Judicial)

Sd/-
(P.S. Pruthi)
Member (Technical)

प्रमाणित प्रति / Certified True Copy

सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001