FAX : 0532-2400149

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 29/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71172/2016-SM[BR] dated 26/12/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the **Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1 ST/CROSS/146/2011	ST/1871/2010	CCE KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
		Name and Address of Respondent
2		I.T.I. LIMITED, G.F. 01, SOMDUTT PLAZA, MALL ROAD, KANPUR.,,

Copy To

3Advocate(s) / Consultant(s): SH S.P.OJHA,CONST
299 BAGHAMBARI HOUSING SCHEME
ALLAHPUR,ALLAHABAD

4Bar Association, CESTAT, Allahabad

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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

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

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Appeal No.ST/1871/2010-ST[SM]
WITH
Cross Application No.ST/CROSS/146/2011

Arising out of Order-in-Appeal No.499-ST/APPL/KNP/2010 dated 30.09.2010 passed by Commissioner (Appeals) Customs & Central Excise, Kanpur.

Commissioner of Central Excise, Kanpur

...APPELLANT(S)

VERSUS

I.T.I Limited, Kanpur.

...RESPONDENT (S)

APPEARANCE:

Shri D.K. Deb, Asstt. Commr. (A.R.) for the Department (s)

Shri S.P. Ojha, Consultant for the Assessee (s)

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 26.12.2016

FINAL ORDER NO.- 71172/2016

Per Mr. Anil G. Shakkarwar:

The present appeal is filed by the Revenue against Order-in-Appeal No.499-ST/APPL/KNP/2010 dated 30.09.2010 passed by Commissioner (Appeals).

2. The brief facts of the case are that the respondents were purchasing SIM Card from BSNL and selling the same. On enquiry by Revenue, the Revenue came to know that BSNL paid a commission of Rs.20802716/- to the respondent during the period from 2004-05 to 2008-09. It appeared to Revenue that said commission received by the respondent should be assessable value for discharge of Service Tax treating the said assessable value for providing Business Auxiliary Service. Therefore, through show-cause-notice dated 23.10.2009,

respondents were called upon to show cause as to why service tax of Rs.24,24,936/- should not be demanded from them. The issue was decided by Original Authority through Order-in-Original No.05-ST/ADDL Commr./2010 dated 18.02.2010. The respondents argued before the Original Authority that BSNL has already paid Service Tax on the amount, which is given to respondent as commission, and therefore, it amount to double taxation on the same assessable vale. The Original Authority did not appreciate the arguments and confirmed the demand, ordered to pay interest and imposed penalty is under Sections 76, 77 & 78 of Finance Act, 1994. Aggrieved by the said order, appeal before Ld. Commissioner (Appeals). The Ld. Commissioner (Appeal) decided the appeal through impugned Order-in-Appeal dated 30.09.2010. The Ld. Commissioner (Appeal) has taken into consideration the breakup of the value of the SIM Card sold to customer and examined the same. He has treated Rs.331/- as the value of the SIM Card sold to customer out of which the respondents were receiving commission of Rs.15. He has found that out of Rs.331/-, Rs.31 was the Service Tax paid and Rs.300/- was assessable value. He also found that BSNL was passing on Rs.15 commission to respondent and said amount was already part of the assessable value of the Rs.300. He therefore, dropped the proceedings and allowed the appeal. Aggrieved by the said order, Revenue is before this Tribunal.

3. Revenue has in the grounds of appeal given the same breakup of Rs.331/-, being the price at which the said SIM Card is sold to the

ultimate customer and claimed that Rs.15 commission received by respondent should be subjected into Service Tax.

4. Heard the Ld. DR for the Revenue, who has supported the grounds of appeal.

5. The respondent submitted their cross-objection No.146/2011. The learned consultant for respondent contended that Rs.15 per SIM Card received as commission for the respondent was already the part of assessable value on which BSNL has paid service tax.

6. 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.

(Dictated & pronounced in the open Court)

(Anil G. Shakkarwar)
Member (Technical)

Mishra

प्रमाणित प्रति / Certified True Copy

30/12

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