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

Dated: 31/07/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. ST/A/70721/2017-CU[DB] dated 25/07/2017

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/137/2011	**Commissioner of CUSTOMS-Kanpur** 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH 208005
		Name and Address of Respondent
2		Sanjay Kumar Maheshwari Cabin No.-402,padam Towers,14/113,civil Lines,, KANPUR ,UP

Copy To

3 Bar Association, CESTAT, Allahabad

4 Director Publications, Customs, Excise, I.P. Estate, Delhi

5 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

6 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

7 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

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

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

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

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

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

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

Asstt. Registrar

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

APPEAL No.ST/137/2011-CU[DB]

(Arising out of Order-in-Appeal No. 571-ST/APPL/KNP/2010 dated 19/11/2010 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

Commissioner of Central Excise & S.T., Kanpur	**Appellant**
Vs.	
Sanjay Kumar Maheshwari	**Respondent**

Appearance:

Shri Gyanendra Kumar Tripathi, Asstt. Commr. (AR)	for Appellant
Written Submission,	for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing	:	25/07/2017
Date of Decision	:	25/07/2017

FINAL ORDER NO. 70721/2017

Per: Anil Choudhary

The present appeal is filed by the Revenue against Order-in-Appeal No. 571-ST/APPL/KNP/2010 dated 19/11/2010 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur.

2. The brief facts of the case are that respondents are sub-broker of UPSE Securities Limited, Kanpur, who are broker of Bombay Stock Exchange. The respondent was issued with a show cause notice bearing C.No.

V(15)Off/Adj/ST/96/10/8320 dated 10.06.2010, calling upon them to show cause, as to why service tax amounting to Rs.5,08,862.10/- should not be recovered from them on the commission received as sub-broker. The said show cause notice was adjudicated through Order-in-Original No. 40/ST/Addl. Commissioner/2010 dated 12.08.2010 wherein the Original Authority confirmed the demand and imposed penalty of Rs.5,08,862/-. Aggrieved by the said order, respondent preferred appeal before Commissioner (Appeals). Learned Commissioner (Appeals) decided the appeal through the impugned Order-in-Appeal dated 19.11.2010. The Ld. Commissioner (Appeals) has held that the service tax demand is neutral and therefore dropped the proceedings. Aggrieved by the said order, revenue preferred the present appeal.

3. The ground of appeal is that it was held by this Tribunal in the case of Unique Investment Centre Vs. Commissioner of Central Excise, Chandigarh reported at 2009 (13) STR 158 (Tri-Delhi) that the activity of sub-broker in relation of sale or purchase of security comes under ' Business Auxiliary Service' .

4. Learned A.R. has supported the grounds of appeal.

5. Vide their written submission dated 24.07.2017 respondent has submitted that this Tribunal has held in the case of Commissioner of Central Excise, Kanpur Vs P.K.

Khandelwal & Company and others reported at 2016-TIOL-45-CESTAT-ALL that when the main broker has paid service tax then the commission received by the sub-broker shall not be subjected to levy of Service Tax and that while deciding the said case this Tribunal has taken into consideration the said case law relied upon by respondent in the ground of appeal.

6. Having considered the rival contention, we find that the facts of the appeal before us are similar to the facts in respect of the said case law in the case of Commissioner of Central Excise, Kanpur Vs P.K. Khandelwal & Company and others (supra). Therefore, following the precedent Final Order of this Tribunal, we hold that the sub-broker who received commission from the main broker while main broker has paid the service tax on commission received by him cannot be once again subjected to service tax. Therefore, we dismiss the appeal filed by the revenue.

(Dictated in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

akp

प्रमाणित प्रति/Certified True Copy
03/08/17
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