

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

Dated: 30/11/2017

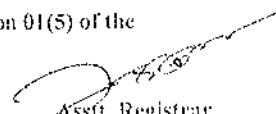
1.5

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/71767/2017-CU[DB] dated 29/11/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 91(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.


 Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	ST-972/2011	AAR KAY AGENCIES 111 A/21, Ashok Nagar, Kanpur.

	Name and Address of Respondent
	-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.

Copy To

3. Advocate(s) / Consultant(s):

**Dharmendra Srivastava &
 Associates, C.A
 13/392(1) CIVIL LINES,
 KANPUR,
 UTTAR PRADESH**

4 Bar Association, CESTAT, Allahabad

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-11

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)

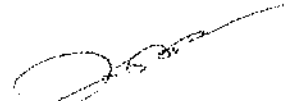
10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

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 Karkardouma Court, Delhi-110032

14 C.D.R. 15 Office Copy 16 Second Folder Copy 17 Guard File


 Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 1

APPEAL No. ST/972/2011-CU[DB]

(Arising out of Order-in-Original No. 02/ST/Commissioner/2011 dated 28/02/2011 passed by Commissioner of Central Excise & Service Tax, Kanpur)

M/s Aar Kay Agencies

Appellant

Vs.

Commissioner of Central Excise & Service Tax, Kanpur

Respondent

Appearance:

Shri Dharmendra Srivastava (CA)
Shri Mohd Altaf (Asstt. Commr.) AR

for Appellant
for Respondent

CORAM:

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

Date of Hearing : 29/11/2017
Date of Decision : 29/11/2017

FINAL ORDER NO: 71767/2017.....



Per: Archana Wadhwa

As per the facts on record the appellant is engaged in sale purchase of SIM Cards and Recharge Coupons of M/s BSNL. Proceedings were initiated against them alleging that they are providing taxable services under the category of Business Auxiliary Service. Accordingly, demands were confirmed alongwith imposition of penalties.

2. The appellant, during the course of adjudication, took a plea that BSNL has discharged service tax on the full value of

SIM Cards and Recharge Coupons, including the commission paid to the appellant. The said plea was not accepted by the Adjudicating Authority by observing that it is the appellant who is providing the services and is liable to pay service tax.

3. We find that the issue is no more res-integra. In respect of other cases of vendors of BSNL, the Tribunal has held that inasmuch as BSNL was discharging the service tax on the full face value of SIM Cards, including the discount or commission of the distributors, no further demand can be upheld against the said distributors. One such reference can be made to Tribunal's decision in the case of Daya Shankar Kailash Chand vs. Commissioner of C.EX & S.T., Lucknow reported at 2013 (30) STR 428 (Tri. Del) which stands upheld by the Hon'ble Allahabad High Court, reported at 2014(34) STR J99 (All.).

4. In view of the fact that disputed issue is settled, we set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Dictated and pronounced in Court)

Sd/-
Anil G. Shukkarwar
Member (Technical)

Sd/-
(Archana Wadhawa)
Member (Judicial)

Atkkt

Approved and Certified True Copy
Registrar
C.E.S.T.A.T.
35, M.C. Road, Lucknow-221001
35, M.C. Road, Allahabad-201001

01/01/18

