FAX : 0532-2400149 REGISTERED / AD

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

Dated: 13/07/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70632/2017-SM[BR] dated 07/07/2017

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/752/2011	**Piccadily Holiday Resorts Limited** Bara Birwa Road, Alambagh, LUCKNOW-UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

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Copy To

3Advocate(s) / Consultant(s):

VARUN GABA, (ADVOCATE)
7th Floor, Udyog Vihar, Ph-V, NH-8, Adjacent to Trident Hotel, Gurgoan - 122016 Haryana. COMPLEX, UDYOG VIHAR,PHASEV , GURGAON, HARYANA

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, 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 & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 2

APPEAL No. ST/752/2011-ST[SM]

(Arising out of Order-in-Appeal No. 51-ST/LKO/2011 dated 04/03/2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow)

M/s Piccadily Holiday Resorts Limited — **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Lucknow — **Respondent**

Appearance:

Shri Varun Gaba, Advocate, for Appellant
Shri Gyanendra Kumar Tripathi, Assistant Commissioner (AR), for Respondent

CORAM:

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

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

FINAL ORDER NO. 70632/2017..........

Per: Anil G. Shakkarwar

The present appeal filed by appellant M/s. Piccadily Holiday Resorts Limited is directed against Order-in-Appeal No. 51-ST/LKO/2011 dated 04/03/2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow.

2. The brief facts of the case are that the appellants were providing services such as "Mandap Keeper, Dry Cleaner & Transport of goods by Road". On scrutiny of their records it was noticed that they were availing abatement in respect of Mandap Keeper Services & Dry Cleaner Services and also availing Cenvat credit of Service Tax paid on input services and thus violating condition for availment of abatement. It was also noticed that there was also some short payment of

Service Tax in respect of Mandap Keeper service & Dry Cleaner service. It was also alleged that they have availed Cenvat credit of Rs.20,930/- in excess of their entitlement. Therefore, they were issued with a Show Cause Notice dated 11/11/2009, which was adjudicated on contest through Order-in-Original No. 24/ADC/LKO/2010 dated 08/06/2010 wherein the Original Authority confirmed the demand and imposed penalty. Aggrieved by the said order appellants preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) decided the appeal through impugned Order-in-Appeal dated 04/03/2011 wherein he upheld the said Order-in-Original.

3. Heard the parties and perused the record.

4. The ld. Commissioner (Appeals) in Para 5.1 of the impugned Order-in-Appeal dated 04/03/2011 has held that the appellant could not adduce any breakup or details of the amount of Rs.3,76,158/- stated to have been deposited by them nor produced any evidence that the said amount relates to their outstanding Service Tax liability and therefore, he has held that demand is sustainable in respect of Mandap Keeper Services & Dry Cleaner Services for the period from October, 2006 to March, 2007. He has further held that the appellant could not adduce any breakup or details of the amount of Rs.11,723/- and could not produce any documentary evidence to prove their contention, in respect of allegation about abatement. He has held that the appellant had

admitted of having availed the Cenvat credit in addition to the benefit of abatement. He has further held that the demand in respect of said services are sustainable. Further, the appellant submitted before me that the Cenvat credit availed in respect of Mandap Keeper Services & Dry Cleaner Services were reversed before issue of Show Cause Notice and such evidence was submitted to the Original Authority, which was examined. He has requested to remand the matter back to the Original Authority once again for reconciliation. I, therefore, remand the matter back to the Original Authority with direction to examine all the records that were already produced and now shall be produced during re-adjudication. I also direct the appellant to produce all the evidences to establish their case along with reconciliation so as to enable the Original Authority to come to logical conclusion. In the above terms, I set aside both impugned Order-in-Original & Order-in-Appeal and remand the matter back to the file of Original Authority. In above terms, appeal is allowed by way of remand.

(Dictated and pronounced in Court)

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

Ansari

प्रमाणित प्रति/Cerified True Copy
17/07/2017
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

FAX : 0532-2400149 REGISTERED / AD

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

Dated: 18/07/2017

To

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

Final Order No. ST/A/70633-70637/2017-CU[DB] dated 03/07/2017

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/114/2011	C.C.E & ST, KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
2		ST/210/2011	C.C.E & ST, KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
3	ST/CROSS/56972/2013	ST/746/2011	C.C.E & ST, LUCKNOW 7-A, Ashok Marg, Lucknow.
4		ST/1698/2011	C.C.E, & ST, MEERUT-II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)
5		ST/1850/2011	C.C.E & ST, MEERUT-II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

	Name and Address of Respondent
6	JAIN AGENCIES, JAIN VILLA, KHORI KUAN, DISTT. RAMPUR.-UP
7	SUMAN COPIER TRADER, HAMIRPUR, (U.P.),,
8	LAXMI & SONS, SHYAM SADAN, 2097, RAJENDRA NAGAR, STATION ROAD, ORAI (U.P.),,
9	CEEKAY ASSOCIATES PVT LTD Rampur.-UP-244901

10

RAMA SALES AND
SERVICES,
BAHUGANA MARKET
ALLAHABAD (U.P.),,

Other Appellants and Respondents as per Annexure

Copy To

11 Advocate(s) / Consultant(s):

Ms. Natasha Sarkar, (Adv.)
ALD
3/1A/3 OPP AUTO
SALES,Above the Office Of
Blue Dart/DHL Courier,
COLVIN ROAD, LOHIA
MARG ALLAHABAD-211001

12

S. P. Ojha
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Scheme, Allahpur,
Allahabad,
Uttar Pradesh

13

A. P. Mathur
167, TAGORE TOWN,
Allahabad,
Uttar Pradesh

14 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

24 C.D.R. 25 Office Copy 26 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. 1

ST/CROSS/56972/2013 in ST/746/2011-CU[DB]

APPEAL No.ST/114, 210, 1698, 1850 & 746/2011 -CU[DB]

(Arising out of Orders-in-Appeal No. 585-586-ST/APPL/KNP/2010 dated 30/11/2010, 622-ST/APPL/KNP/2010 dated 31/12/2010, passed by Commissioner of Central Excise & Customs (Appeals), Kanpur, 388-ST/MRT-II/2011 dated 28/07/2011& 279-ST/MRT-II/2011 dated 29/06/2011, passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II & 22-ST/LKO/2011 dated 22.02.2011 passed by the Commissioner of Customs, Central Excise & Service Tax, Lucknow)

Commissioner of Central Exeise, Kanpur,

Meerut-II & Lucknow Appellants

Vs.

M/s Suman Copier Trader,

M/s Laxmi& Sons,

M/s Jain Agencies,

M/s Ceekay Associates Pvt. Ltd. &

M/s Rama Sales and Services Respondents

Appearance:

Shri Sandeep Kumar Singh, Deputy. Commissioner (AR)
Shri Pawan Kumar Singh, Supdt (AR) for Appellants
None (in Appeal No.ST/114, 1850/2011)
Ms Natasha Sarkar, Advocate (in Appeal No.ST/210/2011)
Shri A.P. Mathur, Advocate (in Appeal No.ST/1698/2011) &
Shri S.P. Ojha, Consultant (in Appeal No.ST/746/2011) for Respondents

CORAM:

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

Date of Hearing : 03/07/2017
Date of Decision : 03/07/2017

FINAL ORDER NOs-70633-70637/2017

Per: Anil G. Shakkarwar

The above said appeals are filed by the Revenue against the Impugned Orders-in-Appeal, as the issue involved in these appeals is liability of service tax on commission received by respondents on sale of SIM-Cards received from M/s Bharat Sanchar Nigam Ltd. (BSNL). The details of the appeals are as follows:-

Sl. No.	Appeal No.	Name of Respondents	Impugned O-I-A No. & Date
1.	ST/114/2011	M/s Suman Copier Trader	585-586-ST/APPL/KNP/2010 dated 30/11/2010
2.	ST/210/2011	M/s Laxmi & Sons	622-ST/APPL/KNP/2010 dated 31/12/2010
3.	ST/1698/2011	M/s Jain Agencies	388-ST/MRT-II/2011 dated 28/07/2011
4.	ST/1850/2011	M/s Ceekay Associates Pvt. Ltd.	279-ST/MRT-II/2011 dated 29/06/2011
5.	ST/746/2011	M/s Rama Sales and Services	22-ST/LKO/2011 dated 22.02.2011

2. Heard the parties.

3. We find that the issue is no more res-integra, since the same has been decided by this Tribunal through the Final Order No.71172/2016 dated 26.12.2016, in the case of Commissioner of Central Excise, Kanpur Vs ITI Ltd., Kanpur. In the said appeal this Tribunal has found that the sales commission paid to the respondent, is part of the assessable value on which BSNL has already paid service Tax. In view of the same, this Tribunal had held that "The Commission received by the respondent has been already subjected to

Service Tax at the hands of BSNL". The fact of the said case is squarely applicable on the present case. Therefore, we dismiss the above stated 5 appeals filed by the revenue. Respondents shall be entitled for consequential relief, if any, in accordance with law. Cross Objection in Appeal No.ST/74629/2011 also stands disposed of.

(Dictated in Court)

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

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

akp

प्रमाणित प्रति/Certified True Copy
21/07/2017
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