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: 21/02/2017

To

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

Final Order No. ST/A/70205/2017-CU[DB] dated 20/02/2017

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/50988/2015	**Commissioner of CUSTOMS-Meerut-i** EXCISE CHOWK...UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT, UTTAR PRADESH 250005
		Name and Address of Respondent
2		Kumar Drinks Pvt Ltd 61/13, Jansath Road, Laxman Vihar,, MUZAFFARNAGAR ,U.P.

Copy To
3Advocate(s) / Consultant(s):

ABHINAV KALRA CA
G-15 SECTOR 3, NOIDA

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 AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal No. : ST/50988/2015-CU[DB]

Arising out of OIA No. Appeal-I,MRT/MRT/39-ST/2014 dated 16.12.2014 passed by Commr. (Appeals), Customs, Central Excise & Service Tax, Meerut.

For approval and signature:

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

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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 His Lordship wishes to see the fair copy of the Order?	: Seen
4. Whether Order is to be circulated to the Departmental Authorities?	: Yes

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C.C.E. & S.T. MEERUT-I ...APPELLANT(S)

VERSUS

KUMAR DRINKS PVT LTD. RESPONDENT (S)

APPEARANCE

Shri D. K. Deb, Asstt. Commr. (D.R.) for the Department
Shri Abhinav Kalra for the Respondent (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 03. 08. 2016

FINAL-ORDER NO.- 70205/2017

सीमा शुल्क उत्पाद एवं सेवा कर अपीलीय अधिकरण
CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL
सत्यमेव जयते

Per Mr. Anil Choudhary :

The Revenue is in appeal against the Order-in-Appeal No. Appeal-I,MRT/MRT/39-ST/2014 dated 16.12.2014 passed by the Commissioner of Central Excise and Service Tax, Meerut-I.

2.1. The brief facts of the case are that the appellant assessee is engaged in providing the services of promotion and marketing/distribution of various products of M/s. B.S.N.L. which allegedly fall under the category of "Business Auxiliary Service" (BAS) in terms of Section 65(105) (zzb) of the Finance Act, 1994 which defines the term taxable service for 'Business Auxiliary' Service as "taxable service" means any service provided or to be provided to a client by any person in relation to Business Auxiliary Service.

2.2. Based on an information that M/s. B.S.N.L., Muzaffar Nagar is paying commission to their Franchisees, are not paying service tax on the commission received for providing the taxable category of service-promotion/marketing of various products of M/s. B.S.N.L. Officers of Anti Evasion, Central Excise Division, Muzaffar Nagar asked M/s. B.S.N.L., Muzaffar Nagar to furnish the copy of agreement in respect of the appellant.

2.3. The appellant assessee was also asked by the Officers of A.E. Div.-I, Muzaffar Nagar to provide the details of commission received by them from B.S.N.L., Muzaffar Nagar, and the bills raised upon M/s. B.S.N.L. They were also requested to obtain the service tax registration and discharge the service tax liability. In response to the summons from the department, the appellant provided the details through letters dated 16.12.2011 and 11.05.2012. As per details submitted by the appellant assessee, they obtained gross amount during the period 28.03.2008 to 31.03.2011 and during the period 01.04.2011 to 31.03.2012 vide letter dated 11.05.2012 from B.S.N.L., attracting service tax liability. Thus, the appellants it appeared are liable to pay service tax of Rs. 14,30,559/-. On the amount of commission received by them from M/s. B.S.N.L. towards selling/distributing B.S.N.L. SIM Card, recharge coupons, tariff vouchers etc. to the customers.

2.4. Accordingly, a show cause notice dated 10.01.2013 was issued to the respondent for recovery of Service tax of Rs. 14,30,559/- including Education Cess & Secondary & Higher Education Cess alongwith interest and penalties as provided under Section 76, 77 and 78 of the said Act were also proposed to be levied against them. The adjudicating authority vide Order-in-Original No. 32/JC/M-1/14 dated 31.03.2014 Confirmed the demand of Service tax to the tune of Rs. 14,30,559/- under Section 73(1) of the Act along with interest under Section 75 of the Finance Act, 1994. A penalty of Rs. 200/- per day or 2% per month (whichever is higher) was imposed under Section 76, Rs. 10,000/- under Section 77 and Rs. 14,30,559/- under Section 78 of the Finance Act, 1994 were imposed upon the party.

2.5. Being aggrieved with the impugned Order-in-Original, the respondent filed an appeal with the Commissioner (Appeals), Central Excise, Meerut-I. The Commissioner (Appeals) vide OIA No. Appeal-I,MRT/MRT/39-ST/2014 dated 16.12.2014 has observed that M/s BSNL has paid service tax on the face value of SIM cards, Recharge Coupons etc. The Commissioner (Appeals) mainly relied on the CESTAT, decision in the case of M/s G.R. Movers Vs. CCE, Lucknow reported in 2013(30)STR-634 (Tri.Del.), and held that the party is liable to pay the service tax on the commission paid by M/s BSNL to them, but since, BSNL has already discharged the burden of payment of service tax on the face value, therefore the party is not liable to pay service tax again on the same value. Accordingly, the Commissioner (Appeals) vide instant OIA No. Appeal-I.MRT/MRT/39-ST/2014 dated 16.12.2014 allowed the appeal of the party by way of setting aside the Order-in-Original No. 32/JC/M-I/14 dated 31.03.2014.

3. Learned A.R. Shri D.K. Deb, appearing for Revenue, has urged various grounds of appeal, which are as under :

(i) The impugned activities are not covered under the category of Business Auxiliary Service ;

(ii) The activity of sale and purchase of SIM/recharge coupons is not a taxable transaction ;

(iii) M/s BSNL has discharged its burden of the service tax on its branded items and service tax cannot be charged twice for the same service which has also been held by the Hon'ble Tribunal, New Delhi in service tax Appeal No.171/2007 in the case of South East Corporation Vs. Commr. of Central Excise vide Order dated 25.05.2007 (2009) 22 STT 446,wherein it has been held that the said activity does not come within the ambit of BAS and hence, the demand is not sustainable. Further, it is submitted that the issue has already been settled as per the similar case of M/s G.R.Movers Vs. CCEx., Lucknow reported in 2013(30)STR-634 (Tri.Del.).

(iv) The penalty is not imposable as there is no evidence of deliberate defiance of law.

5. The ld.C.A., Shri Abhinav Kalra, appearing for the Respondent, relies on the impugned order and prays for dismissing the appeal filed by the Revenue.

6. Having considered the rival contentions, we find that the present matter is no longer *res-integra* and the same is decided in favour of the Respondent by the precedent decision of this Tribunal in the case of M/s South East Corporation Vs. Commissioner of Central Excise & Service Tax reported in [2009] 22 STT 446 (Bang.-CESTAT). Respectfully following the ratio of the said judgement, we dismiss the present appeal filed by the Revenue and set aside the impugned order.

(Dictated and pronounced in the open Court)

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

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

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सत्यापित प्रति / Certified True Copy
03/03/17
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