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: 15/09/2017

To

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

Final Order No. A/71060/2017-SM[BR] dated 14/09/2017

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/70816/2016	**Commissioner of CUSTOMS-Kanpur** 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH 208005
		Name and Address of Respondent
2		Music Centre Station Road,civil Lines,, LALITPUR 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
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad – 211 001

COURT NO. II

DATE OF HEARING : 14/09/2017.
DATE OF DECISION : 14/09/2017.

Service Tax Appeal No. 70816 of 2016 (SM)

[Arising out of the Order-in-Appeal No. 46/ST/APPL/KNP/ 2016 dated 25/05/2016 passed by The Commissioner (Appeals), Central Excise, Kanpur.]

CCE, Kanpur — Appellant

Versus

M/s Music Centre — Respondent

Appearance

Shri Sandeep Kumar Singh, Authorized Representative (DR) – for the Appellant.

None – for the Respondent.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**

Final Order No. 71060/2017 Dated : 14/09/2017

Per. Ashok Jindal :-

The above said appeal is filed by Revenue.

2. The brief facts of the case are that the respondent was purchasing Sim Card from BSNL and selling the same. On enquiry by Revenue, the Revenue came to know that BSNL paid a commission to the respondent for the said transaction. It

Ashokjindal

appeared to Revenue that the 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 the respondent was called upon to show cause as to why the said activity should not be classified as Business Auxiliary Service and why Service Tax on the same should not be levied on the basis of Commission received by the respondent treating the said commission as assessable value. The said show cause notice was adjudicated through orders-in-original confirming the demand. Aggrieved by the said order the respondent preferred appeal before Commissioner (Appeals), learned Commissioner (Appeals) decided the appeal through impugned order-in-appeal. The learned Commissioner (Appeals) has observed that the issue involved is whether the commission received by the respondent was required to be subjected to service tax. The learned Commissioner (Appeals) has taken into consideration the break-up of the value of the SIM Card sold to customer by the respondent and examined the issue. He has treated Rs. 331/- as the value of the SIM Card sold to customer and that out of which the respondent received 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 has also found that BSNL was passing on Rs.15/- as commission to the respondent and said amount was already part of the assessable value of the Rs.300/-. Out of Rs.331/-, Rs.15/- was retained by the respondent as commission and Rs.316/- was retained by BSNL. He found that this clearly means that Rs.31/- was service tax on assessable value of Rs.300/- which is inclusively Rs.285/- paid to BSNL and Rs.15/- retained by the respondent. Therefore, he held that the commission received by the respondent was already subjected to Service Tax at the hands of BSNL. He therefore, dropped the proceeding and allowed the appeal. Aggrieved by the said order, Revenue is before this Tribunal.

3. The ground of appeal is that the commission is covered by definition of Business Auxiliary Service.

4. Heard the learned DR for the Revenue, who has supported the ground of appeal none appeared on behalf of the respondent and perused the records.

5. I find that the issue is no more res-integra, since the same issue has been decided by this Tribunal through the Final Order No. 71172/2016 dated 26.12.2016 wherein this Tribunal has found that the sales commission paid to the respondent, was part of the assessable value on which BSNL had already paid Service Tax. Therefore, I find no merit in the ground of appeal submitted by Revenue. I, therefore, dismissed the appeal filed by Revenue.

(Dictated and pronounced in open court.)

Sd/-

प्रमाणित प्रति/Certified True Copy
28/09/17

(Ashok Jindal)

Member(Judicial)

PK

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