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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/171 /2007 Date 19/08/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
CHETAK TRADERS

1. HARPREET SINGH, ADVOCATE, G-125, PREET VIHAR, DELHI-110092.

2. A-5, RAJEEV COLONY, CHITTORGARH

CHETAK TRADERS Appellant

Vs

C.C.E, JAIPUR-II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/207/08 **Customs** dated 17.07.08

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar

(Customs Appeal Branch)

Copy to :

1. Respondent

   C.C.E, JAIPUR-II

   NEW CENTRAL REVENUE BUILDING, 'C' SCHEME, JAIPUR-302005
2. Adv. / Consult

   MR.HARPREET SINGH

   G-125, PREET VIHAR, DELHI-110092
3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Service Tax Appeal No. 171 of 2007

(Arising out of Order-in-Appeal No. 663(HKS)ST/JPR-II/2006 dated 10.12.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. RAKESH KUMAR. MEMBER (TECHNICAL)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities.	

M/s Chetan Traders — Appellant

Vs.

CCE, Jaipur — Respondent

Appearance:
Shri Harpreet Singh, Advocate - For appellant
Shri B.K. Singh, DR - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 17.7.2008

Final Order No. ST/207/08 dated 17/7/08

Per S.S. Kang:

Heard both sides.

2. The appellant filed this appeal against the impugned order whereby demand of Service Tax was confirmed on the ground that applicant is providing service of business auxiliary service. The appellants are authorised franchise of BSNL for marketing of various telecom services such as cellular phones, basic phone connections and customer care and selling of re-charge coupons of BSNL. The contention of the appellant is that they are engaged in purchasing various service products from BSNL and selling the same to ultimate customers and earned commission at predefined rate. M/s BSNL is also an assessee of Service Tax and paying Service Tax in respect of the service provided by them. The appellants are paying Sales Tax in respect of goods sold by them. The appellant relied upon the decision of the Tribunal in the case of **Karakkattu Communications Vs. CCE** reported in 2007 (8) STR 164 whereby in a similar situation, the Tribunal set aside the demand.

3. The contention of the Revenue is that as the appellants are rendering service of promoting and

marketing the service of M/s. BSNL and the activity of promotion or marketing of the company falls between the scope of taxable service under the category of business auxiliary service, therefore, demand is rightly made.

4. We find that the issue involved in this appeal is already settled by the Tribunal in the case of **Karakkattu Communications** (supra). The Tribunal held as under :-

> "The stay application and appeal are taken up together for disposal as per law. The appellants were acting as distributors of cellular mobile telephone service for and on behalf of BSNL as per the agreement entered into between them during the period July 03 to December 04. Their services have been brought under the category of 'business auxiliary services." They are contesting the matter on the ground that the service tax has been discharged by BSNL and they were not getting Commission but were trading in the cards. They were discharging sales tax. Learned counsel relies on the ratio of the ruling of *South East Corporation v. CCE* by Final Order No. 610/2007 dated 25.5.07 in respect of identical issue and she says that this bench has already decided the case in assessee's favour. The said final order refers to the clarification given by BSNL about discharge of service tax on sim cards sold to the distributors.

2. Heard learned DR who defends the order.

3. We have gone through the cited final order. The findings recorded in para 2 are reproduced herein below.

"2. I have heard both sides in the matter. I am of the considered opinion that the appellants were not carrying on the activity of 'Business Auxiliary Service. They have purchased BSNL post-paid/pre-paid Cellular Sim Cards and sold the same in the market. They have only received certain amount of profit which is ultimately a business practice when goods are sold in the market. The issue pertaining to levy of Sales Tax is already before the Apex court. There is no service carried out by the appellants but actually they have done the activity of purchase and sale which comes within the purview of 'sale of goods' and sales tax is attracted. The Commissioner (Appeal)'s finding that the appellant is doing the activity of marketing and distribution of products and it comes within the ambit of Business Auxiliary Service is not a correct finding especially, in the light of the appellants having paid full value for the Sim Cards to the BSNL, and sold the same on the profit margin. The learned counsel points out to the correspondence with the BSNL, the appellants had on this issue, and the BSNL had clarified that they had already paid service tax on the sim cards sold to the appellants, this also clearly shows that the BSNL had already discharged their burden and there cannot be

> double taxation in the peculiar circumstances of the case there is no merit in the impugned order and same is set aside by allowing the appeal with consequential relief, if any."
>
> The above order clearly applies to the facts of the case. Respectively following the ratio of the same, the impugned order is set aside and appeal allowed with consequential relief."

5. The ratio of the decision is fully applicable in the facts of the present case. Hence, impugned order is set aside and the appeal is allowed.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

RM