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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/529 /2007 - CU[DB] Date 21/04/2009

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

To :
M/S BHARTI HEXACOM LTD.

K-21, SUNNY HOUSE,MALVIYA MARG, C-SCHEME,JAIPUR,RAJ.
M/S BHARTI HEXACOM LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/123 2009 CU[DB]** dated 02.04.09

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 I

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

2. Adv. / Consult

MR.KESHAV MALOO/PANKAJ JAIN

202-II FLOOR, ANAND PLAZA, NR. AYAD BRIDGE, UDAIPUR-313001.

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 - 3
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
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 LAWCRUX Advisors (P) Ltd, Law House,1-8,Sector - 10, Faridabad 121003 (Haryana)
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Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:2.4.2009

Service Tax Appeal No.529of 2007

Arising out of the order in original No.24/JPR-I/2007/S.T. dated 10.5.07 passed by the Commissioner, Central Excise, Jaipur I.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellants — Respondent

M/s Bharti Hexacom Ltd. vs. C.C. & C.Ex., Jaipur I

Appearance:

Shri Keshav Malloo, C.A. , Shri A. Agarwal, C.A. and Shri Sanjay Jhanwar, Advocate for the appellant
Shri Vijai Kumar, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

Final Oral Order No. ST/123/09

Per P.K. Das:

Heard both sides and perused record.

2. Learned ~~Advocate~~ Counsel submits that they have availed credit on input service on telephone services used in the output service on telephone connection (cellular). The credit was denied on the ground that input service is leased line used in telephone service and the two services do not fall under the same

service, credit is inadmissible under Rule 6 of Serviced Tax Credit Rules, 2002. He submits that BSNL had been paying service tax on telephone service, which was availed by the appellants. He further submits that demand of tax was raised on the amount received from the subscriber towards SIM Card would form part of the taxable value. He submits that SIM cards were purchased by them and paid sales tax. He also submits that the entire demand of tax is barred by limitation. Learned Advocate cited the decision of the Hon'ble Supreme Court in the case of Bharat Sanchar Nigam Ltd. vs. UOI – 2006 (2) STR 161 (SC).

3. Learned DR reiterates the findings of the Commissioner. He submits that value of SIM Card would be included in the taxable value as held by the Hon'ble Kerala High Court in the case of C.C.E. & C. , Cochin vs. M/s Idea Mobile Communication Ltd. vide order and judgment dated 4th September 2008 in Central Excise Appeal No.20 of 2006.

4. After hearing both sides and on perusal of the record, we find that the appellant stated before the Commissioner that they paid sales tax on SIM cards. the value of SIM card cannot be included in activation charges. Regarding the denial of credit, it is categorically stated by the appellant before the Commissioner that BSNL paid tax on telephone services and on the basis of BSNL document, they have availed input service credit. It is the contention of the learned Advocate that the jurisdictional Central Excise authority of the appellant company cannot assess the payment of tax on the input service provider. We find that the Hon'ble Supreme Court in the case of Bharat Sanchar Nigam Ltd. (supra) held as under:

> ***"………. If the SIM Card is not sold by the assessee to the subscribers but is merely part of the services rendered by the service providers, then a SIM card cannot be charged separately to sales tax. It would depend ultimately upon the intention of the parties. If the parties intended that the SIM card would be a separate object of sale, it would be open to the Sales Tax Authorities to levy sales tax thereon. There is insufficient material on the basis of which we can reach a decision. However we emphasize that if the sale of a SIM card is merely incidental to the service being provided and only facilitates the identification of the subscribers, their credit and other details, it would not be assessable to sales tax. In our opinion, the High Court ought not to have finally***

determined the issue. In any event, the High Court erred in including the cost of the service in the value of the SIM card by relying on the aspects doctrine".

5. On perusal of the impugned order of the Commissioner, we find that there is no discussions on the above issues as raised by the learned Advocate. We also find force in the submission of the learned Advocate that demand of tax for the period 16.8.02 to 14.5.03 vide show cause notice dated 19.11.2004 is barred by limitation. In our view, all these issues are required to be examined by the Commissioner. Hence , we set aside the impugned order and the matter is remanded back to Commissioner to decide afresh after considering the submissions of the appellant and to examine the evidence. The appeal is allowed by way of remand. It is made clear that all the issues are left open in de novo proceeding.

(M.Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/