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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/256 /2008 - CU[DB] Date **19/09/2011**

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

To :
M/S HUGHES COMMUNICATIONS INDIA LTD.
PLOT NO.1, SECTOR-18,ELECTRONIC CITY,
GURGAON,HARYANA.

M/S HUGHES COMMUNICATIONS INDIA LTD. Appellant

Vs

C.S.T. DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/472/ 2011 CU[DB]** dated 14.09.2011 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.S.T. DELHI
17-B, I.P. ESTATE, IAEA HOUSE,
NEW DELHI.

2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
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. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copv
13. Guard file

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:9.9 .2011

Service Tax Appeal No.256 of 2008

Arising out of the order in appeal No.53/ST/DLH/2007 dated 23.1.2008 passed by the Commissioner (Appeals), Central Excise, New Delhi

For Approval and Signature:

Hon'ble Mrs. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
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

Hughes Communications India Ltd. .. Appellant

Vs.

C.S.T., New Delhi .... Respondent

Appearance:

Shri B.L. Narasimhan, Advocate for the appellants
Shri Sunil Kumar, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Mrs. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

Final Oral Order No. ST/472/11

Per Mrs. Archana Wadhwa:

After hearing both sides, we find that the dispute is in respect of refund claim filed by the appellants on the ground that the services undertaken by them were not covered under the taxable services and the service tax deposited by them was liable to the refunded to them. It is seen that the original adjudicating authority decided the issue on merit as also on the point of unjust enrichment. The refund claim was rejected on both the above points.

2. On an appeal against the above order, the Commissioner (Appeals) did not go to the merit of the case but rejected the appeal on the ground that the appellants have recovered the service tax from their customer and as such were hit by bar of unjust enrichment.

3. It is the grievances of the ld. Advocate of the appellants that the refund claim cannot be rejected on the ground of unjust enrichment, without first deciding the merit of the case. It has to be first held as to whether such refund is admissible on merit or not and it is only thereafter, the issue on unjust enrichment would come into play.

4. We agree with the Ld. Advocate for the appellants. Unjust enrichment cannot be made as a ground for rejection of refund claim, which has to be first decided on merit. If the refund is admissible on merit, thereafter, the issue of unjust enrichment is required to be decided. If the refund claim is found to be hit by bar of unjust enrichment, the same is required to be directed to be placed in the account of welfare fund. As such, the only circumstances on the principle of unjust enrichment would be that the refund, which is otherwise admissible to the assessee, is not required to be given to him, but to be placed in the account of welfare fund. As such, it is absolutely necessary to first decide as to whether the refund claim is otherwise admissible or not. Inasmuch as the Commissioner (Appeals) has not given any decisions on merit in respect of admissibility of refund claim,

we set aside the impugned order and remand the matter to the Commissioner (Appeals) for deciding on merit of the case and thereafter, the other relevant issues. Appeal is disposed of in the above terms.

(Pronounced in open court)

(Archana Wadhwa)
Judicial Member

(Mathew John)
Technical Member

scd/