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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/434/2012 - CU[DB], ST/S/961/12 Dated: **25/04/12**
Assistant Registrar
C.E.S.T.A.T. New Delhi

To,
State Bank Of India
23-c, Madhuban, Chetak Circle, Udaipur, Rajasthan

State Bank Of India (Appellant)

VS

Jaipur-i(Appeal) (Respondent)

I am directed to transmit herewith a certified copy of **Final Order No.** ST/A/341/**CU[DB]** dated 16.04.12 passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**
(ALONGWITH STAY ORDER NO ST/S/467/12)

Assistant Registrar
CUSTOMS Appeal Branch

Copy To,

1. Respondent
CCE, Jaipur-II(Appeal)
NCR BUILDING STATUE CIRCULE
C- SCHEME, JAIPUR

2. Advocate(s) / Consultant(s):
Bipin Garg
B-1/1289,A-Vasant Kunj, New Delhi

3. C.D.R
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, 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. 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 (Haryana)

11. TaxIndiaOnline.com Pvt. Ltd., Unit No. 1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

12. Office Copy

13. Gaurd File

Assistant Registrar
CUSTOMS Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

ST/Stay 961/12 and ST/Appeal No.434/12

(Arising out of order in appeal No.528/AKJ/ST/JPR.11/2011 dated 28.12.11 passed by the Commissioner of Customs & Central Excise,(Appeals), Jaipur)

Date of Hearing: 16.4.2012

For Approval and signature:

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

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 Department Authorities?

State Bank of India — Appellant

Vs

CCE, Jaipur — Respondent

Appeared for the Appellant: Shri Bipin Garg, Advocate
Appeared for the Respondent: Shri B.L. Soni , DR

Coram: **Hon'ble Mrs. Archana Wadhwa, Member(Judicial)**
Hon'ble Shri Mathew John, Member (Technical)

Final ORDER No. ST/A/341/12-Cus
Stay order No. ST/S/467/12-Cus.

Per Archana Wadhwa:

After dispensing with the condition of pre-deposit of service tax, we proceed to decide the appeal itself.

2. Service tax to the extent of Rs. 7,01,571/- stands confirmed against the appellant for the period 10.9.04 to 31.3.07 along with imposition of penalties on the findings that during the said period, the appellants have earned commission on account of EPF/ESI business.

3. The appellant had taken a categorical stand before the original adjudicating authority that they had already discharged their service tax in respect of the above commission by reflecting the same in the banking and financial services, on which they are paying the service tax. However, it is seen that the original adjudicating authority has not taken the above factual averment made by the appellant and has not dealt with the same. By referring to various legal provisions, he has held that the appellant was liable to pay the service tax and accordingly confirmed the same.

4. On appeal against the above order, appellant reiterated their stand that the said commission is also included in receipt of other taxable services under the taxable category of banking and other financial services, on which they have discharged their liability. However, Commissioner (Appeals) without addressing to the above plea raised by the appellant directed them to deposit the entire service tax amount. In as much as the Appellant did not deposit the same and moved an modification application. The Appellate Authority dismissed the appeal for non-compliance with the said order.

5. In the ordinary course, we would have remanded the matter to the Commissioner (Appeals) on merits. However, as we are of the view that the stand taken by the appellant relates to factual verification of record, we deem it fit to remand the matter to the

original adjudicating authority. We accordingly set aside the impugned order, remand the matter to the adjudicating Commissioner with direction to verify the above stand of the appellant and to re-decide the matter accordingly.

6. Stay petition as also appeal gets disposed of in the above manner.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Member (Technical)

(ARCHANA WADHWA)
Member (Judicial)

MPS*