14

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : cestat08@gmail.com

# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

**PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066**

**CUSTOMS APPEAL BRANCH**

Appeal No. ST/427 /2008 - CU[DB] Date **15/06/2012**
ST/514/08

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

To :
C.C.E. CHANDIGARH

C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

**C.C.E. CHANDIGARH** Appellant

Vs

**M/S SAHIB ELECTROWAVE PVT LTD** Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/464-65/ 2012 CU[DB]** dated 07/06/12 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
**M/S SAHIB ELECTROWAVE PVT LTD**
BOOTH NO 8, 33KVA BUILDING,
SECTOR17-C,CHANDIAGRH.

2. Adv. / Consult

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-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. Guard file

Assistant Registrar
(Customs Appeal Branch)

14. M/S Kullu Ram Rajinder Pal.
Surya Complex
Patiala. (Pb)

## CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
## PRINCIPAL BENCH, NEW DELHI
## COURT NO. III

**Service Tax Appeal No. 427 / 2008 & 514 of 2008**

Date of Hearing : **07/06/2012**

[Arising out of Order-In-Appeal No.204/CE/CHD/2008, dated 03.04.08 issued by CCE, Chandigarh]

**For approval and signature:**
Hon'ble Ms. Archana Wadhwa, Judicial Member
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? | No |
| 2 | Whether it should be released under Rule 27 of the 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 |

CCE, Chandigarh — Applicant

Vs

Sahib Electrowave P.Ltd.
Kullu Ram Rajinder Pal — Respondents

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

AR for the Revenue : Shri Amresh Jain
Appellant Advocate: None

Final **ORDER** No. ST/A/464-465/12-Cus

The short issue involved in the present appeal filed by Revenue is as to whether sale of SIM cards of BSNL on commission basis would invite service tax under the category of 'business auxiliary service'.

2. We find that the issue is no more res-integra and stands settled by various decisions. One such reference can be made to the Tribunal's decision in the case of Chetan Traders reported in 2008(TIOL)1694, wherein it was held that the activity amounts to

purchase and sale of SIM cards in the open market on profit basis and as such cannot be held to be falling under the category of 'business auxiliary service'. Another order relied upon by Commissioner (Appeals) is M/s South East Corporation vs. CC&C.Ex, Cochin – 2007(8)STR405(Trib.-Bang.). It is not the Revenue's case that the said decisions stand over-ruled by higher appellate forums. The decisions relied upon by the Revenue in their memo of appeal are not relevant to the issue.

3. In view the above, we reject the appeal filed by the Revenue.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

RK-I