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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

Dated: **03/12/2012**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/726/2012-CU[DB]** dated **22/11/2012**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar(CUSTOMS Appeal Branch)

Name and Address of Respondent

1 ST/Stay/2352/2011 ST/1115/2011 **State Bank Of India,**
409-411, Chetak Centre,12/2,
R.N.T. Marg, Near Hotel Shreemaya,
Indore
MP
452001

Name and Address of Appellant

2 **Commissioner of Central Excise and Service Tax-Indore**
P.B.NO.10...MANIK BAGH ROAD,
MANIK BAGH PALACE,
INDORE,MADHYA PRADESH
452001

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Copy To
3Advocate(s) / Consultant(s):

Krishan Garg & Co, C. A
409-411, CHETAK CENTRE, 12/2,
RNT MARG, NEAR HOTEL SHREEMAYA,
INDORE,MADHYA PRADESH

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4 Bar Association, CESTAT, Delhi

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 C.D.R. **14** Office Copy **15** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066

COURT NO. II

Service Tax Appeal No. 1115/2011

[Arising out of Order-in-Appeal No. IND/CEX/000/APP/166/11 dated 18.4.2011 passed by the Commissioner (Appeals), Customs & Central Excise, Indore]

Date of Hearing/decision: 22nd November, 2012

CC & CE, Indore — Appellant

Vs.

State Bank of India, Indore — Respondent

Present for the Assessee : Shri G. Dixit, D.R.
Present for the Respondent : Shri Krishna Garg, C.A.

Coram: Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Mathew John, Technical Member

FINAL ORDER NO. ST/A/ 726/12-Cus

Per D.N. Panda:

Revenue's grievance is that no service tax was paid by the SBI, Indore, branch, Hence, refund is not admissible. Therefore, appellate order needs to be reversed.

2. Reverse is the submission of the appellant.

3. Heard both sides and perused the record.

4. During stay application hearing it was categorically recorded in Para 2 that pulpable plea of Revenue if entertained, that shall shake confidence of Assessees because

tax not payable, if paid, is refundable. This comes out from third issue framed by learned Commissioner (Appeals) in Para 2 of appellate order read with issue No. 2. For convenience of reading all three issues before the authority are reproduced as under:-

Whether claim of Rs. 26,743/- is time bvarred?

Whether the appellant has wrongly considered the amount of government commission in their value of taxable service and made payment of Service Tax thereon?

Whether on the same count double payment of Service Tax on government commission has been made by the head office i.e. GAD branch Mumbai and SBI M.G. Road branch Indore? If so is the Appellant entitled to refund?"

5. When the crucial issue relates to refund and, learned appellate authority elaborately dealt with them in Para 6.3 of his order and was fully satisfied that claimant was right to get refund on the basis of evidence and materials adduced before him by inquiry it is difficult to disturb such conclusion in absence of cogent evidence to contrary. He was satisfied that service tax was paid by the head office of the appellant bank as well as appellant branch against self same service. The authority was satisfied that there should not be double payment of same tax. One of the payments is to be refunded which is claim of the appellant branch. Therefore, he records that "I find that if refund is not granted to the appellant it will

amount to collecting tax twice on same transaction which is not intention of the Government." When this is the finding, it cannot be discarded without cogent evidence to the contrary by Revenue. Accordingly, appeal of Revenue is dismissed.

(Dictated & pronounced in the Open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

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