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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**STA No.12 of 2017 (O&M)
Date of decision : 21.08.2018**

Commissioner of Central Excise and Service Tax Ludhiana

... Appellant

Versus

M/s Airtech Refrigeration

... Respondent

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Sourabh Goel, Advocate
for the appellant.

Mr. Anil Rathee, Advocate
for the respondent.

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RAJESH BINDAL, J.

The appellant in the present appeal has challenged the order dated 26.05.2016 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi, arising out of Appeal No.ST/51992/2014, raising the following substantial questions of law:-

"i) Whether the Hon'ble Tribunal was justified in treating the services provided by the Respondent to M/s BSNL as same which had been provided by M/s BSNL to its subscribers.

ii) Whether the service of promotion and marketing of services of a client i.e. business auxiliary service, as defined in Section 65(19)(ii) of the Financial Act, 1994 read with Section 65(105)(zzb) ibid provided by the Respondent to M/s BSNL was not different from the telecommunication services, as defined in Section 65(109a) read with Section 65(105)(zzzx) ibid provided by M/s BSNL to their subscribers.

iii) Whether service tax was not chargeable on both the services as defined Section 65(105)(zzzx) and 65(105)(zzb) independent of each other in terms of provisions of Section 66 ibid.

iv) Whether the Respondent was not liable to discharge their own service tax liability independent of and apart from that discharged by M/s BSNL.

v) Whether the Hon'ble Court has not erred by not considering that the law laid down by the Hon'ble apex court in the case of Idea Mobile Communication Limited Versus Commissioner Central Excise and Customs, Cochin-2010(20) S.T.R. J77 (S.C.)-(placed at P-86-c) which held that "the SIM cards have no intrinsic value or purpose other than use in mobile phones and that the service connection cannot be given without activation of SIM card and customer cannot get service without SIM card and thus SIM cards are considered essential part and parcel of the service provided and the dominant position of the transaction is to provide the service."

At the very outset, learned counsel for the appellant submitted that the amount involved in the present appeal is ₹26,44,111/-. As the amount involved is less than the limit prescribed in the Circular issued by the Central Board of Indirect Taxes & Customs (Judicial Cell) dated 11.07.2018, the present appeal be dismissed as not maintainable.

Ordered accordingly.

However, it is made clear that dismissal of present appeal will not be taken as upholding the order passed by the Tribunal as the legal issue raised therein is left open to be considered in an appropriate case.

(RAJESH BINDAL)
JUDGE

(AMIT RAWAL)
JUDGE

21.08.2018
Yogesh Sharma

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Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**