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

**CM 23114-CII/2019 in/and
STA 19/2015 (O&M)**

Date of decision:15.11.2019.

Commissioner of Central Excise
..............Appellant

v.

M/s Rajan Electronics
..............Respondent

**Coram: Hon'ble Mr.Justice Jaswant Singh
Hon'ble Mr.Justice Girish Agnihotri**

Present:- Mr.Rampal,Advocate for
Mr.Tajender Joshi,Advocate for applicant/appellant.

<u>Jaswant Singh,J.</u>

Revenue has filed the instant appeal under Section 35 G of the Central Excise Act,1944 read with Section 83 of Finance Act,1994 challenging the order dated 16.9.2014 (Annexure A-3) passed by CESTAT whereby it was held that buying and selling of sim cards belonging to M/s BSNL is not an activity falling under the category of “Business Auxiliary Service” chargeable to service tax. The following substantial questions of law have been raised in the instant appeal:-

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 service of a client i.e. business auxiliary service, as defined in Section 65 (19)(ii) of the Finance Act,1944 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?

The appeal stands “Admitted”.

Now CM 23114-CII/2019 has been filed on behalf of the appellant stating therein that Central Board of Indirect Taxes and Customs has issued instruction dated 22.8.2019 revising the monetary limits for filing appeals before this Court to Rs.One Crore and these instructions are also applicable on pending appeals. It is further averred that personal penalty involved in this appeal is Rs.70,47,000/- which is below the said threshhold limit of Rs. One crore. In this view of the matter it is averred in the application that Commissioner of Central Goods and Service Tax,Ludhiana has sent instructions to withdraw the present appeal. This application is supported by an affidavit of the counsel for the appellant.

In view of the contents of the application supported by the affidavit of the counsel for the appellant, CM 23114-CII of 2019 is allowed and STA No.19 of 2015 is dismissed as withdrawn.

(Jaswant Singh)
Judge

15.11.2019. **(Girish Agnihotri)**
joshi **Judge**