IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

STA 25/2015 (O&M)
Date of decision:29.11.2019

Commissioner of Central Excise, Central Excise and Service Tax Commissionerate,Jalandhar

..............Appellant

v.

M/s Dyal Medicos,Hoshiarpur

..............Respondent

Coram: Hon'ble Mr.Justice Jaswant Singh
Hon'ble Mr.Justice Sant Parkash

Present:- Mr.Tajender K.Joshi,Advocate for the appellant.

Jaswant Singh,J.

Revenue is in appeal under Section 35(G) of the Central Excise Act,1944 read with Section 83 of the Finance Act,1994 against order dated 20.11.2014 (A-3) passed by CESTAT,New Delhi whereby demand of service tax alongwith interest and penalties imposed upon the respondent was set aside.

The following substantial questions of law have been raised in this 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 service as defined in Section 65(109a) read with Section 65(105) (zzzx) ibid provided by M/s BSNL to their subscribers.*

iii) *Whether the service 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 24422-CII/2019 has been filed on behalf of the appellant stating therein that during the pendency of the appeal Central Board of Indirect Taxes and Customs in exercise of power conferred by Section 35(R) of the Central Excise Act made applicable to the service tax vide Section 83 of the Finance Act has issued instructions dated 22.8.2019,whereby the monetary limit for filing appeal before the Hon'ble High Courts has been revised to Rs. 1 Crore. It has further been stated that instructions dated 22.8.2019 will apply to all pending cases as well including this appeal as revenue involved herein is Rs.95,43,690/-. Copy of instructions dated 22.8.2019 is Annexed As Annexure A-1 with the application. Further the application is supported by an affidavit of Mr.H.B.Negi,IRS,Commissioner, Central Goods and Service Tax,Jalandhar.

In view of the contents of the application supported by the affidavit, CM 24422-CII of 2019 is allowed and STA No.25 of 2015 is dismissed as withdrawn. The substantial questions of law raised,however, would remain open.

(Jaswant Singh)
Judge

29.11.2019. **(Sant Parkash)**
joshi **Judge**

RAJINDER PARSHAD JOSHI
2019.12.02 14:59
I attest to the accuracy and
integrity of this document