SERVICE TAX

- **Margin earned by franchisees on sale of SIM cards/recharge coupons not liable to Service tax**

Chotey Lal RadheyShyam Vs. Commissioner of Central Excise & Service Tax, Lucknow [2015 (64) taxmann.com 399 (Allahabad – CESTAT)]

Facts:

Chotey Lal RadheyShyam (**"the Appellant"**) was appointed as a franchisee for Lucknow by Bharat Sanchar Nigam Limited (**"BSNL"**), on principal to principal basis, for sale of their SIM cards and recharge coupons. The Appellant, in turn, sells the same through network of retailers which amounts to trading activity and the Appellant did not provide any services to BSNL. Further, BSNL has paid the Service tax on the face value of the SIM cards and recharge coupons including the profit margins of the franchisee i.e. the Appellant. However, the Department alleged that the Appellant was promoting/marketing the products of BSNL and thereby, liable to levy of Service tax on profit margins under the category of "Business Auxiliary services".

Held:

The Hon'ble CESTAT, Allahabad relying upon plethora of judicial pronouncements held that in the instant case, BSNL has already paid Service tax on the SIM cards and recharge coupons sold to the Appellant and therefore, again demanding Service tax from the Appellant would amount to double taxation, which is not permissible in law. Further, the Appellant was only engaged in purchase and sale of SIM cards & recharge coupons and his relationship with BSNL is on principal to principal basis. Thus, the Appellant cannot be termed as an agent of BSNL. Hence, the allegation of the Department that the Appellant is promoting/ marketing the business of BSNL is misconceived.

- **Benefit of abatement cannot be denied where Cenvat credit inadvertently taken earlier was subsequently reversed with interest**

Punjan Builders Vs. Commissioner, Central Excise & Service Tax, Vadodara-II [2016 (65) taxmann.com 27 (Ahmedabad – CESTAT)]

Facts:

Punjan Builders (**"the Appellant"**) was engaged in the business of providing construction services in respect of the Commercial or Industrial buildings and civil structures. The Appellant availed the benefit of abatement of 67% as provided under erstwhileNotification No. 1/2006-ST dated March 1, 2006**.** However, the Department denied the benefit of abatement on the ground that the Appellant has violated the condition of abatement by

taking Cenvat credit and thereby, raised the demand of Service tax along with interest and penalty even though the Appellant had reversed the Cenvat credit so taken along with interest.

Held:

The Hon'ble CESTAT, Ahmedabad relying upon the judgments of ***Chandrapur Magnet Wires (P.) Ltd. Vs. CCE [1996 taxmann.com 736 (SC)]*** and ***Leotronics Scales (P.) Ltd. Vs. CCE [Final Order No. 50894 of 2015, dated 23-1-2015]***, held that when the Appellant has reversed the Cenvat credit amount inadvertently availed earlier along with the interest from the date of availment upto the date of reversal of credit, benefit of abatement cannot be denied.

Our Comments:

Erstwhile Abatement Notification No. 1/2006-ST dated March 1, 2006 has been superseded vide Notification No. 26/2012-ST dated June 20, 2012 effective from July 1, 2012, however inference of stated judgment can be applied in present scenario as well.

- **Cenvat credit of Service tax paid on outward transportation is available when ownership of goods has been transferred from seller to buyers at buyer's premises**

Commissioner of Central Excise and Service Tax, Indore Vs. Man Trucks India Pvt. Ltd. [2016-TIOL-163-CESTAT-DEL]

Facts:

Man Trucks India Pvt. Ltd. (**"the Respondent"**) was delivering the goods on Free on Road (**"FOR"**) basis at the premises/site of the buyers providing transportation services and had recovered the transportation charges from the buyers. The Appellant has been availing the credit of Service tax paid on transportation charges. The Department alleged that the Service tax paid on the freight charges for transportation of goods from the depot of the Respondent to buyer's premises will not be eligible for Cenvat credit because as per Section 4(3)(c) of the Excise Act, in case of a manufacturer of excisable goods, the 'place of removal' is either the factory gate, or the depot from where the goods are sold to the customer and not the buyer's premises.

Held:

The Hon'ble CESTAT, New Delhi relying upon the plethora of judgments and by observing various provisions in this regard, held that in the instant case, buyer has borne risk of damage to goods during transit and freight charges were an integral part of price of goods sold by the Respondent to its buyers. Therefore, buyer's premises will qualify as 'place of removal' for purpose of taking Cenvat credit of Service tax paid on transportation of goods.

Our Comments:

It has been held time and again that Cenvat credit on outward transportation is allowed in terms of Rule 2(l) of the Credit Rules when sales are made on FOR basis. In this regard, Para 8.2 of the Master Circular97/8/2007-ST dated August 23, 2007 issued by CBEC, effectively equated the customer's premises as a 'place of removal' in case of FOR sales. Further in order to remove the mist surrounding applicability of definition of 'place of removal' given under Section 4(3)(c) of the Excise Act, when duty is chargeable at specific rate was cleared by insertion ofnew sub-rule (qa) in Rule 2 of the Credit Rules vide Notification No. 21/2014-Central Excise (N.T.) dated July 11, 2014 (Effective from July 11, 2014).

Furthermore, the CBEC vide its Circular No. 988/12/2014-CX dated October 20, 2014, has again clarified that 'the place where property in goods passes on to the buyer' is relevant to determine 'place of removal'.

However, the Trade and Industry is still facing the brunt of litigation on stated issue despite of plethora of legal pronouncements and CBEC's circulars in this regard.