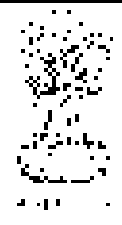




ಅಂತರಜಾಲ (ಆನ್‌ಲೈನ್) ಪರಿಷ್ಕರಣೆಗಾಗಿ ಪ್ರಾಥಮಿಕ ಹಂತದ ಅರ್ಜಿ ಸಲ್ಲಿಕೆ
FOR THE PRINCIPAL EXAMINEE/SHIKH (APP) IN SC. ST. & O.T. EXCISE



ಪ್ರಾಥಮಿಕ ಹಂತದ ಪರೀಕ್ಷೆಗೆ ಸಂಬಂಧಿಸಿದ ವಿಷಯ
ಬಹು ಹಂತದ ಪರೀಕ್ಷೆ: Recruitment of J.E.P.
4th Round (Phase - 2019)

Application No. 000-APP-199-2019 (For Principal Examinee/SHIKH)

ಅರ್ಜಿ ಸಲ್ಲಿಕೆಯ ವಿವರ

ಅರ್ಜಿ ಸಂಖ್ಯೆ: 000-APP-199-2019	ಅರ್ಜಿ ಸಂಖ್ಯೆ: 000-APP-199-2019	ದಿನಾಂಕ: 03/07/2019
Application No:	App No:	Date:
000-APP-199-2019	000-APP-199-2019	03/07/2019

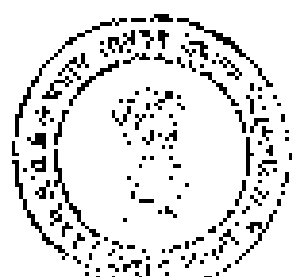
ಪರೀಕ್ಷಾ-ಕಾರ್ಯದ ವಿವರಗಳು

BHV-EXCL 5-000-APP-199-2019

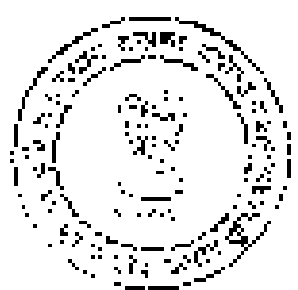
ಅರ್ಜಿ ಸಲ್ಲಿಕೆಯ ದಿನಾಂಕ: 03.07.2019 ಅರ್ಜಿ ಸಂಖ್ಯೆ: 000-APP-199-2019 ದಿನಾಂಕ: 03.07.2019
 Date of Order: Date of issue

ಶ್ರೀ ಕುಮಾರ್ ಸಂಜಯ್ ಕುಮಾರ್ (ಪ್ರತಿಭಾ) - ಸಾರ್ವಕಾಲಿಕ ಸೇವೆಗೆ
Recd. by Shri. Kumar Sanjay Kumar (Pratibha) - Sarvakalika Seva (Sajjanu, Rajaraj)

- ಅರ್ಜಿ ಸಲ್ಲಿಕೆಯ ವಿವರಗಳು: 1. ಅರ್ಜಿ ಸಂಖ್ಯೆ 000-APP-199-2019 ನಲ್ಲಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುವುದು.
- ಅರ್ಜಿ ಸಲ್ಲಿಕೆಯ ವಿವರಗಳು: 2. ಅರ್ಜಿ ಸಂಖ್ಯೆ 000-APP-199-2019 ನಲ್ಲಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುವುದು.
- ಅರ್ಜಿ ಸಲ್ಲಿಕೆಯ ವಿವರಗಳು: 3. ಅರ್ಜಿ ಸಂಖ್ಯೆ 000-APP-199-2019 ನಲ್ಲಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುವುದು.
- ಅರ್ಜಿ ಸಲ್ಲಿಕೆಯ ವಿವರಗಳು: 4. ಅರ್ಜಿ ಸಂಖ್ಯೆ 000-APP-199-2019 ನಲ್ಲಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುವುದು.
- ಅರ್ಜಿ ಸಲ್ಲಿಕೆಯ ವಿವರಗಳು: 5. ಅರ್ಜಿ ಸಂಖ್ಯೆ 000-APP-199-2019 ನಲ್ಲಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುವುದು.
- ಅರ್ಜಿ ಸಲ್ಲಿಕೆಯ ವಿವರಗಳು: 6. ಅರ್ಜಿ ಸಂಖ್ಯೆ 000-APP-199-2019 ನಲ್ಲಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುವುದು.
- ಅರ್ಜಿ ಸಲ್ಲಿಕೆಯ ವಿವರಗಳು: 7. ಅರ್ಜಿ ಸಂಖ್ಯೆ 000-APP-199-2019 ನಲ್ಲಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುವುದು.
- ಅರ್ಜಿ ಸಲ್ಲಿಕೆಯ ವಿವರಗಳು: 8. ಅರ್ಜಿ ಸಂಖ್ಯೆ 000-APP-199-2019 ನಲ್ಲಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುವುದು.
- ಅರ್ಜಿ ಸಲ್ಲಿಕೆಯ ವಿವರಗಳು: 9. ಅರ್ಜಿ ಸಂಖ್ಯೆ 000-APP-199-2019 ನಲ್ಲಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುವುದು.
- ಅರ್ಜಿ ಸಲ್ಲಿಕೆಯ ವಿವರಗಳು: 10. ಅರ್ಜಿ ಸಂಖ್ಯೆ 000-APP-199-2019 ನಲ್ಲಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುವುದು.
- ಅರ್ಜಿ ಸಲ್ಲಿಕೆಯ ವಿವರಗಳು: 11. ಅರ್ಜಿ ಸಂಖ್ಯೆ 000-APP-199-2019 ನಲ್ಲಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುವುದು.
- ಅರ್ಜಿ ಸಲ್ಲಿಕೆಯ ವಿವರಗಳು: 12. ಅರ್ಜಿ ಸಂಖ್ಯೆ 000-APP-199-2019 ನಲ್ಲಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುವುದು.
- ಅರ್ಜಿ ಸಲ್ಲಿಕೆಯ ವಿವರಗಳು: 13. ಅರ್ಜಿ ಸಂಖ್ಯೆ 000-APP-199-2019 ನಲ್ಲಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುವುದು.
- ಅರ್ಜಿ ಸಲ್ಲಿಕೆಯ ವಿವರಗಳು: 14. ಅರ್ಜಿ ಸಂಖ್ಯೆ 000-APP-199-2019 ನಲ್ಲಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುವುದು.
- ಅರ್ಜಿ ಸಲ್ಲಿಕೆಯ ವಿವರಗಳು: 15. ಅರ್ಜಿ ಸಂಖ್ಯೆ 000-APP-199-2019 ನಲ್ಲಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುವುದು.
- ಅರ್ಜಿ ಸಲ್ಲಿಕೆಯ ವಿವರಗಳು: 16. ಅರ್ಜಿ ಸಂಖ್ಯೆ 000-APP-199-2019 ನಲ್ಲಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುವುದು.
- ಅರ್ಜಿ ಸಲ್ಲಿಕೆಯ ವಿವರಗಳು: 17. ಅರ್ಜಿ ಸಂಖ್ಯೆ 000-APP-199-2019 ನಲ್ಲಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುವುದು.
- ಅರ್ಜಿ ಸಲ್ಲಿಕೆಯ ವಿವರಗಳು: 18. ಅರ್ಜಿ ಸಂಖ್ಯೆ 000-APP-199-2019 ನಲ್ಲಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುವುದು.
- ಅರ್ಜಿ ಸಲ್ಲಿಕೆಯ ವಿವರಗಳು: 19. ಅರ್ಜಿ ಸಂಖ್ಯೆ 000-APP-199-2019 ನಲ್ಲಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುವುದು.
- ಅರ್ಜಿ ಸಲ್ಲಿಕೆಯ ವಿವರಗಳು: 20. ಅರ್ಜಿ ಸಂಖ್ಯೆ 000-APP-199-2019 ನಲ್ಲಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುವುದು.



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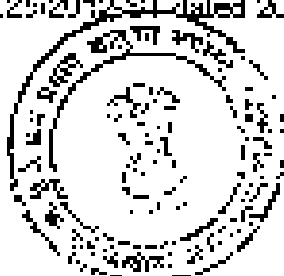
II. ORDER IN APPEAL :

M/s Josh Econnect Solutions Ltd. 308 Aristo Complex Opp. Marneo Darghan, Waghawadi Road Bhavnagar, Gujarat 364007 has filed present appeal against Order-in-Original No. 01/SERVICE TAX/DEMAND/18-19 dated 20.05.2018 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, Central Excise and GST, Division, Bhavnagar-1 (hereinafter referred to as the lower adjudicating authority).

2. The brief facts of the case are that the appellant is registered service tax assessee under various taxable Category including Business Auxiliary Service, Business Support Service, Information Technology Software services under Finance Act 1994 (hereinafter referred to as 'the Act'). The audit revealed difference in income shown in their books of accounts and value declared by Appellant in ST 3 returns for the year 2012-13 to 2015-16; that appellant had provides services relating to Application Program Interface (API) and Local Area Payment Unit (LAPU) based solutions, service links to their customers from various suppliers for making recharges of various mobile service operators, DTH operators etc. on commission basis. Show Cause Notice dated 30 March, 2017 was issued demanding service tax of Rs.29,08,702/- ;Rs.23,70,070/- for the FY 2012-13 to 2015-16 towards business auxiliary services and Rs.5,36,622/- for FY 2015-16 towards business support services) under Section 73(i) of the Finance Act 1994 (hereinafter referred to as 'the Act') along with interest under Section 75 of the Act, and proposing penalty under Section 77 and Section 78 of the Act. The Show Cause Notice was adjudicated by the lower adjudicating authority vide the impugned order and confirmed service tax demand of Rs.29,08,702/- along with interest, imposed penalty of Rs.30,000/- under Section 77 of the Act and also penalty of Rs.29,06,702/- under Section 78 of the Act.

3. Being aggrieved with the Impugned order, the Appellant preferred appeal on the following grounds as under:

(i) Demand of service tax was raised for differences between taxable value of service as shown in service tax returns and as per annual accounts; that differences found in service value is exempted nature, that API (application programming interface and LAPU (local area payment unit) are electronic mode of recharge coupons; that services by distributor/selling agent of SIM Cards and recharge coupon vouchers are exempt from service tax as covered under mega exemption notification No.25/2012-ST dated 20.6.2012 irrespective of nature of source derived.

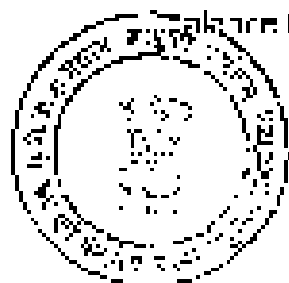


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- (ii) Off the shelf software solutions products are goods and not liable to service tax under Section 66E(d) of Finance Act, 1994 as also clarified at Para 6.4.1 of CBEC education guide, thus service tax is applicable on the services and not on the sale of goods like technology hardware items.
- (iii) Business Auxiliary / support services to ICICI Bank aggregating to Rs.760764/- stands exempted to service tax. Thus, the entire demand of service tax for all the years is bad in law and not enforceable.
- (iv) The Adjudicating Authority has relied on erstwhile definition of individual services as defined in Section 65 of Finance Act, 1994 even though the matter relates to post 1.7.2012 period. Provisions of Section 65 of Finance Act, 1994 are not applicable w.e.f. 1.7.2012 as expressly provided in that section itself and relying definition of individual services under erstwhile Section 65 of the Finance Act, 1994 is incorrect.
- (v) There is no element of suppression of facts, fraud etc. with intent to evade payment of service tax by them and show cause notice is time barred; that no penalty can be imposed on them under Section 77 and Section 78 of the Act.

4. Persona testing in the matter was not attended by anyone on behalf of the Department. Shri Jayesh Mehta, Chartered Accountant attended on behalf of the Appellant who reiterated the grounds of Appeal and made written submission dated 25/04/2019 to say that they have already paid service tax on the post paid charges and on 244 recharges; that pre-paid recharge coupons were exempted under Sr. No. 259(i) of Notification 25/2012-ST Sales 25/23/2012; that for 2014-15, they are claiming exemption on Rs. 20,97,008/- and on Rs. 63,88,944/- service tax already paid, that no service tax for the years 2012-13 & 2013-14, 2015-16 is leviable as they have provided services only through recharge coupon vouchers and not post paid; that Packaged Software sale is subjected to excise duty under Tariff Entry 85236020 against Sr.No 84A, and does not attract Service Tax as clarified by CBEC vide Circular dated 29.2.2006 and Para 6.4.1 of CBEC Education Guide; that hardware items are 'modems' which are to be subjected to VAT as clearly stated in the invoices.

4.3 In written PF submission, the appellant submitted that they have entered into distributorship/selling agent agreement with M/s Cyberplat India P Ltd and M/s. Future Services P Ltd. that recharge coupon vouchers business was earlier done in physical form, that new method in digital form for recharge coupon vouchers came into existence, that appellant has started providing e-walker aggregation system - web based system for use of recharge coupon vouchers for its customers for attracting e-walk based use of recharge balance; that



[Signature]

appellant has two main activities i.e. (1) Commission/Discount for recharge coupon vouchers on purchases as distributor/selling agent and (2) providing software solutions to its customers for effecting a web based use of recharge balance.

4.2 Appellant submitted that (i) Income from recharge coupon vouchers relating to cellular prepaid services are exempt under Notification No.25/2012-ST dated 20.6.2012 and income of Rs.158.72 lacs is exempted, whereas, service tax is payable on income on other services like GSM, post paid mobile; (ii) all the shelf software solutions product sale of Rs.9.72 lacs were not liable to service tax under Section 36 F (d) of the Act; (iii) service tax was also not applicable on sale of technology hardware items of Rs.3.18 lacs, which attracts VAT and Central Excise.

4.3 Appellant submitted year wise chart of their income and explained difference with ST-3 returns to say that major difference relates to commission/discount income related to recharge coupons for cellular prepaid services, which can not be equated with normal commission/ discount income from other businesses and hence exempted under Notification No. 25/2012-ST dated 20.6.2012; that appellant relied upon case laws of M/s. Bharat Cell (2015(10) TMI (111)) and M/s. GR Movers (2013(21) Taxman.com (Tri. Delh)); that the lower adjudicating authority has not appreciated the meaning of technical words LAPU and API, that LAPU (Local Area Payment Unit) is well known traditional recharge method via use of SIM cards of telecom operator that the cellular talk time is purchased and sold in SIM Card and is in tangible form whereas water traded in low volume that API (Application Programming Interface, recharge through digital link between two systems) is electronic form of recharge and is intangible and this is purchased by the customers kept in common pool with the company and API based access for use of recharge transaction is done and thus recharge is done in electronic form; that discount / commission relating to recharge/ talk time (both through LAPU or API methods, physical or electronic form) is exempt under Notification No. 25/2012-ST; that GSTN vide Circular No. 1002-02/2011-12/ Taxation/ GSTN/ Franchisee 707 dated 4.12.2013 has clarified that recharge coupons in physical form/ electronic form, e-coupons or e-vouchers, are various modes for recharging/ extending validity of a prepaid mobile connection and no service tax is payable w.e.f 1.7.2012.

4.4 The lower adjudicating authority has relied upon final audit report and



(Signature)

exemption on consideration of the facts stated by them under mega exemption notification; that the lower adjudicating authority has without appreciating these facts and the nature of income related to development of APN and LAPL for a particular year; that the fact that appellant is engaged in two separate businesses of issuing or exchange coupon vouchers on online platform APN and providing software solutions for carrying out online trading activities of foreign exchange, which has not been reckoned by the lower adjudicating authority; that the lower adjudicating authority did not verify income from software solutions and income in respect of D2% suspended cellular services.

4.5 The lower adjudicating authority has not relying Section 65 (105) (zzzzs), Section 65 (112) and Section 65 (118) of Finance Act, 1994 for taxability purpose as definition of the service tax is liable to be after introduction of negative list regime with effect from 1/1/2015.

4.6 Provisions of section 65(105) of Act of gross and not liable to service tax as clarified by CBEC letter No. 3347/2008-1KU dated 29/2/2008 and attached Certificate of exemption Tariff Item 85238020, that they submitted copies of ledger and invoices to establish that they have paid VAT on these items as these are not subjected to service tax.

FINDINGS

6 I find that the appellant tax authorities have deposited 7.5% of service tax confirmed in Appeal Memorandum and given details of Challan No. etc. which respondent has not contradicted. In absence of any contrary report I hold that the Appellant has complied with the provisions of Section 85F of the Act.

8. I have carefully gone through the facts of the case, the impugned order and writer as well as oral submissions made by the Appellant. The issue to be decided in this appeal is whether the impugned order, in the facts of this case, confirming demand of Service Tax and imposing penalty on Appellant is correct or not.


7 I find that the lower adjudicating authority has confirmed the demand trading income of appellant arising out of taxable services whereas, appellant's contention is that the lower adjudicating authority has not verified the facts that few persons are exempted and his income free from taxable income also.

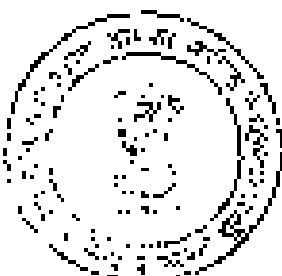


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7.1 Appellant has submitted that income in relation to API (Application programming interface) and LAPO (Local Area Payment Unit) is towards account/commission relating to recharge (talk time in electronic form) instead of earlier physical recharge coupons for mobile prepaid line, that they had entered into agreement with M/s Cyberplnt India Pvt. Ltd and M/s Euronet Services India Pvt Ltd for electronic recharge business which are exempted. Appellant submitted copies of agreement and also debit advice in support of their claim. Sample copy of debit advice is reproduced as under for ease of reference.

Serial No. of Service Register
Pg. No. 6

New Entry in Exchange		Date: 13-11-2019			
Debited To: ERUN03283 Debit Advice: Euronet Services India Private Limited Plot No. 10, Sector 4 Gurgaon, Haryana PIN: 122002 Dept. IT & System Support Telephone No. 01297-411000 E-mail: support@euronet.com Website: www.euronet.com		Credit to Bank: M/s. Cyberplnt India Pvt. Ltd. Plot No. 10, Sector 4 Gurgaon, Haryana PIN: 122002			
Sr. No.	Description of Debit / Service	Dr. Date	Rate	Per	Amount
1	Recharge Service for 2000 Recharge for 2000	13-11-19	150	Recharge	300.0000
2	Bank Commission Charge				20.4000
3	Net-Debit for 2000 Recharge				279.6000
Grand Total		13-11-19			599.0000
Grand Debit to Vendor M/s. Cyberplnt India Pvt. Ltd.					
Bank Details: Bank Name: M/s. Cyberplnt India Pvt. Ltd. Branch: Sector 4, Gurgaon Account No: 1234567890123456 IFSC Code: CYBRIN03		Euronet Services India Private Limited  Authorized Signatory			
The above debit advice was prepared as per the					
Exempt					



(133)

No. 51 of Service Register
PC No. 9

Name of the Firm/Company/Institution M/s. ABC & Co. Pvt. Ltd. 123, Main Road, New Delhi India - 110001 Telephone: 011-12345678 E-mail: abc@abc.com		Name of the Firm/Company/Institution M/s. XYZ & Co. Pvt. Ltd. 456, Main Road, New Delhi India - 110001 Telephone: 011-87654321 E-mail: xyz@xyz.com	
Sl. No.	Description of the Service	Amount	Amount
1	Advertisement in the Press	10,00,000.00	
2	Advertisement in the Press	5,00,000.00	
3	Advertisement in the Press	2,00,000.00	
4	Advertisement in the Press	1,00,000.00	
5	Advertisement in the Press	1,00,000.00	
6	Advertisement in the Press	1,00,000.00	
7	Advertisement in the Press	1,00,000.00	
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9	Advertisement in the Press	1,00,000.00	
10	Advertisement in the Press	1,00,000.00	
11	Advertisement in the Press	1,00,000.00	
12	Advertisement in the Press	1,00,000.00	
13	Advertisement in the Press	1,00,000.00	
14	Advertisement in the Press	1,00,000.00	
15	Advertisement in the Press	1,00,000.00	
Grand Total Total Service Tax Payable		20,00,000.00	20,00,000.00

7.2 I find that Notification No. 25/2012-51 dated 20.6.2012 exempts selling agent or a dealer/broker of SIM cards or recharge coupon vouchers from payment of service tax under Sr. No. 20(7) of the Notification, which reads as under:-

In exercise of the power conferred by sub-section (1) of section 53 of the Finance Act, 1994 (22 of 1994) (hereinafter referred to as the said Act) and in pursuance of notification number 12/2012-Service Tax, dated the 17th March, 2012, contained in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (1) and number 25/2012-51, dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 65 of the said Act, namely:-

- (a) Services by the following persons in respective capacities -
 - (i) sub-broker or stockbroker or member of a stock broker
 - (ii) licensed person or a member of a securities exchange,



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- (d) mutual fund agent in a mutual fund or asset management company,
- (e) distributor in a mutual fund or asset management company,
- (f) selling or marketing agent of foreign bonds to a distributor or a selling agent,
- (g) selling agent or a distributor of SIM cards or recharge coupons

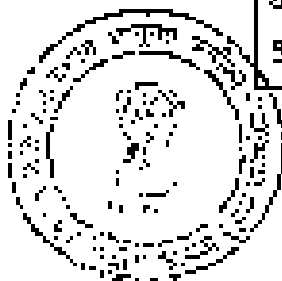
(Emphasis supplied)

7.3 I also find that the services in respect of recharge coupon vouchers are exempted from service tax irrespective of mode of transaction i.e. physical recharge or electronic recharge and hence there is merit in appellant's argument that commission/discount income in respect of prepaid recharge vouchers are exempted from service tax and not liable to service tax.

7.4 I further find that Sl. No. 29(f) of Notification No. 25/2012-ST dated 20.6.2012 refers to exemption to distributor of SIM cards recharge coupons i.e. recharge of prepaid cellular services and hence, services in respect of electronic payment transactions other than prepaid vouchers are not exempted. Therefore, appellant is not entitled for exemption for commission/discount received in providing such services. Appellant has in their additional written submission has submitted year wise reconciliation statement claiming exemption on Trade & Commission Discounts in respect of several prepaid services and accepted service tax liability on income on API & LAPU based services other than in respect of Cellular prepaid recharge services. I, therefore, hold that appellant is entitled to claim exemption of service tax as per Sl. No. 29(f) of Notification No.25/2012-ST dated 20.6.2012 on their income relating to electronic cellular prepaid rechargee only but liable to pay service tax on income on API & LAPU other than electronic cellular pre-paid recharges.

8. As regards income from Package Software, the appellant has submitted copy of ledger showing Package software sale and also copies of sample invoices and contended that Package software sale i.e. off the shelf software solution is not liable to Service tax and it attracts Central Excise duty under Tariff Item 85289020. I find the contention of the appellant correct as Central Excise Tariff item 85289011 reads as under.

Entry	Description
852890	-- Other
852890 10	-- Gramophone records
852890 20	-- Information Technology Software
852890 30	-- Audio-visual news or audio-visual



(Signature)

852380 47	Education: films
852380 57	Education: of educational nature
852380 60	Education: computer graphics
852380 80	Other

(Emphasis supplied)

6.1 It is also noted that Notification No. 44-2006-CE dated 30-12-2005, prescribed central excise duty @12% on Packaged Software under Tariff Heading 8525, which reads as under:-

Notification No. 44/2006-CE, dated 30-12-2005

In exercise of the powers conferred by sub-section (1) of section 24 of the Central Excise Act, 1944 (1 of 1944) and the Finance Government, being satisfied that it is necessary in the public interest so to do, hereby exempts excisable goods of the description specified in column (1) of the Table below and falling within the heading, sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1985) (hereinafter referred to as the Central Excise Tariff Act), as are given in the corresponding entry in column (2) of the said Table, from payment of the duty of excise specified therein, under the First Schedule to the Central Excise Tariff Act, as in or to the extent of the amount indicated in the entry specified in the corresponding entry in column (3) of the said Table.

Explanation: - For the purposes of the notification, the rates specified in column (4) of the said Table are ad valorem, unless otherwise specified.

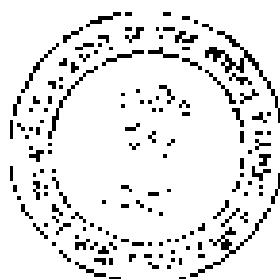
TABLE				
S.No	Heading or sub-heading or item	Description of goods	Rate	
(1)	(2)	(3)	(4)	
1.	8542 50	Printing Blocks and printing types	Nil	
2.	9102 10 00	Light-microscopical instruments and micrographs	Nil	
3.	8527	Software	12%	

2. This notification shall come into force on the 1st day of January, 2007.

(Emphasis supplied)

6.2 It is a fact that M.F. 13-5/1 dated 6-0-07, No. 33401/2006 TRU dated 28-2-2006 on budgetary changes treats Packaged Software to be treated as goods. Relevant Para. 4.1.3 of the letter reads as under.

[Signature]



74.1.2 Packaged software developed for client being treated as goods, & taxable to excise duty @ 6% in 1972 which has been increased from 4% to 12% with notification No. 12/2008-FC dated 11/2008. Number of IT services and IT enabled services (ITES) are already taxable to service tax under various taxable services.

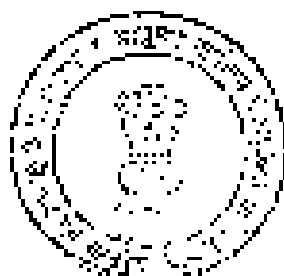
(Emphasis supplied)

8.3 In view of above I find that income from Packaged software product sold off the shelf by the appellant does not fall under the taxable services and hence, not liable to service tax.

9 Appellant stated that hardware sales are goods and liable to VAT and hence, income from sales of hardware can not attract service tax and submitted copy of invoices in support of this claim. I find from Invoices No. HW/001 to HW/008 and ledger for the year 2015-18 submitted by the appellant that the appellant had sold "6 port Modem" valued at Rs.3,18,000/ during the year and therefore no service tax is payable on this income.

10. It is appellant's contention that that lower adjudicating authority has relied upon on Final Audit Report and Show Cause notices which merely compared year wise figures in Audit Reports and ST-1 returns and did not appreciate the facts represented by the appellant before him. That he has confirmed demand holding that income from selling and purchasing of API and LAPU is service taxable and service tax is required to be paid on the services of API & LAPU based solutions including services to ICICI Bank without discussing any of the evidences submitted by them. That he did not bifurcate income attributable to the services and from sale of goods to arrive at service tax liability. I find that the lower adjudicating authority has directed demand without verifying factual position and records and hence, I hold that the issue needs to be decided after considering financial as well as business records of the appellant submitted by them.

10.1 In view of above I am of the considered view that this is fit case to remand the matter back to the lower adjudicating authority for de-novo proceedings. Appellant is directed to submit all relevant records and documents in support of their contention within 30 days from the date of this order to the lower adjudicating authority who shall pass reasoned and speaking order on merit decided in foregoing pages of this order according to law and reasonable opportunities to the Appellant to explain their case.



[Handwritten signature]


10.2 It has been reported that the power of assessing authority is legal and proper in the light of the decision of the Hon'ble CESTAT in the case of Singl Alloys (P) Ltd reported as a 113/2013-Trib (Del) wherein it is held that power to demand duty upon goods imported in Section 35(3) of the Central Excise Act, 1944 does not vest in the Hon'ble CESTAT in the case of M/s. Honda Ball Power (Pvt) Ltd. para 10 of its order dated 20/12/2013 (227) EIT 353 (Tri Del) has also held that Commissioner of Excise does not have power to demand a case under the provisions of Section 35(3) of the Central Excise Act, 1944. The Hon'ble High Court of Gujarat in case no. 2-16 of 2014 of Associated Hotels Ltd. has held that even the assessment in Section 35A(3) of the Central Excise Act, 1944 in 2014, the Commissioner of Excise has powers to demand.

11. In view of above, I direct the assessing authority to decide income attributable to (i) electronic recharge voucher services prepaid cellular services, (ii) off the shelf packages software sale and (iii) sale of hardware liable to state VAT and amount of service tax liability of respondent as per decisions held above in this order.

12. अपीलकर्ता द्वारा की गई सभी अपील का विचार उपरोक्त तरीके से किया जात है।

12. The appeal filed by the respondents is hereby disposed off on above terms.




 कुमार तरेण
 स्थान आयुक्त, अयोध्या

पंजीकृत द्वारा उत्पाद

सेवाएं,

M/s Jashi Bazaar Samiksha Ltd

305 Anisla Complex,

Opp. Madhav Dahan,

Waghmarewadi Road, Bhopal-462010

सेवाओं जोशी बिजनेस सोल्यूशंस लिमिटेड

305, अदिलाने कॉम्प्लेक्स,

ओप. माधव दाहन,

वाघमरेवाडी रोड, भोपाल-462001

प्रति,

1. स्थान आयुक्त, अयोध्या, पंजीकृत द्वारा उत्पाद एवं सर्वे केन्द्रीय उत्पाद शुल्क, बुधवारन की, अहमदाबाद को भेजे कृपया हेतु।
2. आयुक्त केन्द्राड अरुण एच सीडी एन एड के सेवा उत्पाद शुल्क, भोपाल आयुक्तान्य, भोपाल को उचित कर्तव्य हेतु।
3. सहायक आयुक्त, केन्द्रीय उत्पाद एवं सेवा शुल्क केन्द्रीय उत्पाद शुल्क, अहमदाबाद, भोपाल, वा.सुरे, आकाशवाणी भोपाल हेतु।
4. गाई फाइल.

