CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

Service Tax Appeal No. 60027 of 2021
Service Tax Cross No. 60066 of 2022

(Arising out of Order-in-Appeal No. JAL-EXCUS-000-COM-008-20-21dated 16.09.2020 passed by the Commissioner (Appeals), Central Excise and Central Goods & Service Tax, Jalandhar)

Commissioner of Central Excise And Central Goods And Service Tax. — **Appellant**

CGST Bhawan, F-Block, Rishi Nagar,
Ludhiana, Punjab-141001

VERSUS

M/s Hathway Sukhamrit Cable & Datacom Pvt. Ltd. — **Respondent**

Near Lal Rattan Cinema
Surya Tower, Jalandhar,
Punjab-144001

APPEARANCE:

Shri Sourabh Goel, Special Counsel for the Appellant
Shri Sudhir Malhotra, Advocate for the Respondent

CORAM:

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. 60137/2022

Date of Hearing: 27.04.2022
Date of Decision: 12.10.2022

AJAY SHARMA:

This appeal has been filed by Revenue challenging the impugned order dated 16.9.2020 passed by Commissioner, CGST, Jalandhar in Order-in-Original No.JAL-EXCUS-000-COM-008-20-21 by which the learned Commissioner dropped the substantial portion of the demand except Rs.4,72,569/- and also

denied the Cenvat credit of Rs.2,44,989/-. The Respondent-Assessee had filed cross-objection against the confirmation of the demand of Rs.4,72,569/- as well as the denial of Cenvat credit.

2. The issue to be decided is whether the respondent - a Multi System Operator (MSO) was required to pay service tax on the gross amount collected from the subscribers/ultimate customer or only on the gross amount received by them from the Local Cable Operators (LCOs) who are providing the content, maintenance services to the subscriber/ultimate customer and collecting payments from them and remitting amount to respondent as per their invoice and retaining the balance amount collected by them? And also whether the Cenvat credit has rightly been denied to the respondent-assessee?

3. The facts of the case are that M/s. Hathway Sukhamrit Cable and Datacom Private Ltd. (now known as M/s. Hathway Patiala Cable Pvt. Ltd.)- Respondent herein were providing *'cable operator services'* covered under section 65(105)(zs) of the Finance Act, 1994 upto 30.06.2012 and under section 65(44) of the Act w.e.f. 1.7.2012. Mainly they were working in four cities viz. Jalandhar, Amritsar, Ludhiana and Chandigarh and had obtained separate registrations with the Registering Authority in all the four cities. They had also obtained provisional registration as a Multi System Operator (MSO) from the Ministry of Information & Broadcasting under section 4 of Cable TV Act r/w

Rule 11C of the Cable TV Rules. It is the case of revenue that preventive staff of Central Excise & Service Tax Commissionerate, Ludhiana got information that one M/s. Himachal Future Cable and Datacom Private Limited at Ludhiana were collecting service tax from customers but not depositing the same and therefore a search was conducted at its premises by the Preventive staff on 10.1.2013 and various documents relating to evasion of service tax were recovered. Out of which certain documents pertains to the respondent herein. Resultantly further scrutiny and investigation was conducted including recording of the statements of Director as well as authorised signatory of respondent which, according to Revenue, revealed that the respondent had evaded service tax by suppressing the value of taxable service provided as they had not paid service tax on the gross amount of subscription collected from ultimate consumers and accordingly a show cause notice dated 23.3.2018 was issued to the respondent to show cause as to why:-

i) Service Tax (including Education Cess and Secondary & Higher Education Cess) amounting to Rs.18,14,17,137/- (Rs Eighteen Crores Fourteen Lacs Seventeen Thousand One Hundred Thirty Seven only) should not be demanded from them under the proviso to Section 73(1) of the Finance Act, 1994;

ii) Interest on the Service Tax of Rs.18,14,17,137/- (Rs Eighteen Crores Fourteen Lacs Seventeen Thousand One Hundred Thirty Seven only) mentioned at Sr. No. (i) above, should not be demanded from them under Section 75 of the Finance Act, 1994;

iii) Irregularly availed Cenvat Credit Rs.75,85,527/- (Rupees Seventy Five Lacs Eighty Five Thousand Five Hundred Twenty Seven only) should not be demanded from them under Rule 14 of the CCR, 2004 read with Section 73 of the Finance Act, 1994;

iv) Interest on the amount of Rs.75,85,527/- (Rupees Seventy Five Lacs Eighty Five Thousand Five Hundred Twenty Seven only) mentioned at (iii) above, should not be demanded under Rule 14 read with under Section 75 of the Finance Act, 1994;

v) Penalty under Section 78(1) of the Finance Act, 1994 should not be imposed upon them in respect of service tax demanded at (i) above, for wilful suppression of facts with intent to evade payment of Service Tax.

vi) Penalty under Section 77(1) of the Finance Act, 1994 should not be imposed upon them in respect of evasion of service tax at (i) above;

vii) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed upon them in respect of evasion of service tax at (iii) above;

viii) Penalty under Rule 15(3) of the CCR, read with Section 78(1) of the Finance Act, 1994 should not be imposed upon them in respect of evasion at (i) and (iii) above.

4. The learned Adjudicating Authority vide impugned Order-in-Original dated 16.9.2020 dropped the substantial portion of the demand except the demand of Rs.4,47,569/- and also denied the Cenvat credit of Rs.1,69,859/-on the ground of non-production of respective invoices and of Rs.75,130/- for paying audit fee to its employee & authorised signatory Mr. Rajesh Mehru. The Revenue has filed appeal against the dropping of the demand whereas the respondent has filed cross-objections

against the confirmation of the short payment of service tax and also of denial of Cenvat credit after invoking the extended period of limitation as according to respondent the issue herein relates to interpretation of statutory provisions and there is no fraud, collusion, wilful misstatement or suppression with intention to evade service tax on the part of the respondent.

5. According to learned Special counsel appearing for Revenue, prior to year 2011, MSOs or cable TV operators had an option of transmitting programmes in Analogue or digital form and both kind of transmissions were in vogue depending upon technical capabilities of individual MSO/cable operator. With effect from 25.10.2011, the Government decided to mandatorily introduce *Digital Addressable Systems (in short 'DAS')* and the Cable TV Act was amended by substituting section 4A of Cable TV Act prescribing the provisions relating to obligatory transmission of programmes in encrypted form through digital addressable system in notified areas. The respondent started implementing DAS even before the effective date and were providing both analog and digital services simultaneously to different subscribers but they did not purchase any *Set Top Box (STB)* and the Set Top Boxes which they installed at their subscribers premises were procured by them from *M/s. Fastway Transmissions Pvt. Ltd., Ludhiana (in short 'FTPL')* on refundable security basis. According to learned counsel, the respondent failed to provide any documentary evidence with regard to basis

of procurement of STB from FTPL and that they neither paid service tax collected from their customers nor filed ST-3 returns therefore for the period from April, 2010 to July, 2014 service tax has been calculated on the basis of STBs procured by the respondent from FTPL as per the information received from them. On implementation of *Digital Addressable System-II(DAS-II)*, the respondent started issuing gross billing on the LCOs in DAS-II areas i.e. Chandigarh, Ludhiana, Amritsar and Jalandhar during the period 1.7.2014 to 31.12.2015 and paid service tax, however, they stopped gross billing w.e.f. January, 2016 and started raising invoices upon LCOs in respect of their share only to evade payment of service tax as there was no change in the working of MSO/LCO after 1.1.2016, however there was no change in the services being provided by the MSO to the subscribers during the period of gross billing from July, 2014 to December, 2015 and thereafter w.e.f. January, 2016 also. The respondent also did not provide year wise data of different packs offered through STBs to the subscribers for the period April, 2012 to July, 2014, therefore the subscription income for this period has been arrived at by considering monthly subscription @ Rs.200/- per subscriber till 31.3.2012 and Rs.250/- per subscriber after 1.4.2012 (i.e. after introduction of '*DAS*'). According to learned counsel since the subscription were inclusive of service tax, cum-tax benefit has been extended to the respondent during this period and since as per the reconciliation chart supplied by the respondent they have not

provided digital services during the period April, 2010 to March, 2012 hence *DAS* subscription income on which tax has been short paid for the period April, 2012 to July, 2014 has been calculated accordingly. So far as period from August, 2014 to March, 2017 is concerned the same was calculated after taking the *Subscriber Management System (in short 'SMS')* data supplied by the respondent and for ascertaining the subscription for any particular subscriber, the type of channel packs offered to him in SMS system was matched with its rate reported to TRAI and accordingly digital/DAS subscription income from all subscribers in SMS database was calculated. The main thrust of the argument of learned Special counsel is that under DAS/CAS, the customers are subscribers of MSO and that MSO i.e. the respondent is the service provider and section 67 of Finance Act, 1994 prescribes for payment of service tax on the gross amount charged by the service provider for the service provided.

6. Per contra learned counsel for the respondent submits that as per business module they supplied signals to LCO's and it was the responsibility of LCO's to transmit television signals to subscribers utilising their own cable network. The respondent rendered services to LCO's who in turn transmitted signals to subscribers. Therefore the respondent was liable to pay service tax only on the portion recovered by them from LCO's as per section 67 of Finance Act, 1994 which stipulates that the value of taxable services shall be the gross amount charged by the

service provider for providing *'such service'*, when the service is provided for a consideration in money. In support of his submission, learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the matter of *Union of India vs. Intercontinental Consultants and Technocrats P. Ltd.; 2018 (10) GSTL401(SC)*. With effect from 1.7.2014 i.e. on implementation of *Digital Addressable System-II (DAS-II)*, the respondent started issuing bills upon LCOs for full subscription amount to be collected from the subscribers and paid service tax on the gross amount charged from LCOs on invoices during the period from 1.7.2014 to 31.12.2015. But the said billing pattern was challenged by some cable operators before TDSAT and one of the LCO even committed suicide also, therefore w.e.f. 1.1.2016 the respondent started issuing invoice of only their share to all LCOs in both DAS and non-DAS areas and there was no intention to evade tax. According to learned counsel the respondent raised invoices on LCOs as per its share only and paid service tax on amount collected from LCOs which was in consonance with the CBEC Circular dated 13.12.2011 which clarified that in case of revenue sharing, service tax is required to be paid by respective party to the agreement. The LCOs collected payment from the subscribers and remit amount to respondent as per the invoice raised and retained the balance amount collected. Learned counsel further submits that for the period in dispute, similar demand has been raised by revenue on the LCOs also so revenue is tried to collect the tax both from MSO & LCOs on the

entire gross amount received from subscribers by LCOs which is nothing but *double taxation,* but the same was set aside by this Tribunal vide *Order No.A/60167-60171/2019* dated 22.2.2019 in the matter of *M/s. Blue Star Communication vs. Commr. of Central Excise & Service Tax- Ludhiana*. According to learned counsel the respondent never issued bills to subscribers and that they discharged their service tax in accordance with law and therefore the learned Commissioner has rightly dropped the demand of service tax. Learned counsel accordingly prayed for dismissal of the appeal filed by Revenue. So far as the confirmation of the demand of Rs.4,72,569/- as well as denial of Cenvat credit are concerned, learned counsel submits that the said demand has been confirmed without any basis and that the disallowance of Cenvat credit on the audit bills of statutory audit on the ground that the auditor is an employee of the company is contrary to law and also that the extended period could not have been invoked by the learned commissioner in the facts of this case as no fraud, collusion, wilful mis-statement or suppression with intention to evade service tax has been proved by revenue.

7. We have heard learned Special counsel for the Revenue and learned counsel for the respondent and perused the case records including the synopsis/written submissions and the case laws placed on record by the respective sides. The respondent is a Multi-System Operator (‘MSO’) and purchases digital signals from broadcasters. These signals are transmitted through

satellite to receiving stations owned by MSOs. MSOs further transmit these signals to the Local Cable Operators ('LCO') who own their last-mile network to individual homes and customer premises. An individual subscriber is required to subscribe to an LCO who would transmit the signals to them. Admittedly, the television signals received from satellite is managed and handled through various layers of persons/activities till it reaches the ultimate customer. We have to see the role of the respondent herein in this chain. The respondent is engaged in providing cable services to its customers as Multi Service Operator (MSO) under the regulation issued by the Telecom Regulatory Authority of India (TRAI). As per the mandate of the TRAI Regulations, the MSO is required to execute an interconnection Agreement with the Local Cable Operators (LCOs) on the terms provided by the TRAI and the subscription for the Cable Services is collected by the respective LCOs from the subscribers against the invoice issued. The respondent used to issue invoices on the LCOs for its eligible revenue share and the same have been placed on record by the respondent.

8. The *'Cable Operator Service'* were brought under service tax vide notification No.8/2002 dated 1.8.2002. Section 65(105)(zs) was amended w.e.f. 10.9.2004 and words *'Multi System Operator'* was included therein. The Finance Act, 1994 was restructured w.e.f. 1.7.2012 from that date the service in

dispute becomes taxable as per Section 66B r/w Section 65(44) ibid. The *'Cable Service'* consists of four limbs namely:

(i) Broadcasters;
(ii) Multisystem Operator (MSO);
(iii) Local Cable Operator (LCO); and
(iv) Subscribers.

The Broadcaster owns the content of Television signals to be telecasted. The MSO receive signals of television channels from various broadcasters and in turn transmit these signals to various LCOs and thereafter the LCOs re-transmit the same to the subscribers in their area through their own infrastructure i.e. transmitters, nodes, cables, amplifiers, RG-6 cable, fiber of various splitters, connectors, cores etc. If LCOs are transmitting the signals to the subscribers then certainly they can only receive the payment from the subscribers. Mr. Gurdeep Singh-Director and Mr.Rajesh Mehru-authorised signatory of the respondent in their respective statements specifically mention that M/s. FTPL-MSO [*group company of the respondent]* after receiving the signals from the broadcaster supplied the same to the LCOs who through their own network re-transmitted the signals to their subscribers/ultimate consumers which is nowhere disputed by the revenue. The respondent is a Multi System Operator and had entered into Interconnection and Revenue Sharing Agreement with Local Cable Operators as per Rule 9 of the Cable Television Network Rules, 1994 and paid service tax on the amount received by them as per the provision of section 67 ibid which require service tax to be paid on value of services

rendered by the respective party. Telecom Regulatory Authority of India (TRAI) from time to time issued specimen of *interconnection agreement* between the MSO & LCO for providing cable TV services and one of such specimen agreement dated 15.3.2016 specifically provides for revenue sharing of subscription between MSO & LCO and also states that the agreement is on *"Principal to Principal basis"* and that both MSO & LCO have to ensure payment of tax as per their revenue sharing. Although it is the case of the Revenue that the respondents raised the bills directly to the subscribers but records of the case do not support the allegation. For the period upto 31.3.2012 the respondent provided analogue signals to the LCOs for which they used to raise bills on the LCOs on lump sum basis on their declaration regarding number of subscribers with the LCOs. The total subscription amount received by LCOs was shared in the ratio of 50:50 between the respondent and the LCOs and the respondent was paying service tax on their share only. For the period from 1.7.2014 to 31.12.2015 the respondent started issuing bills upon LCOs for full subscription amount to be collected from the subscribers during that period and paid service tax on the gross amount charged from LCOs on those invoices.

9. It is the specific case of the respondent that they i.e. MSO is providing services to Local Cable Operator (LCO) only and the said LCO through its own network is distributing that

contents/services to the ultimate customer/consumer and that the responsibility of maintenance of network and complaints regarding the reception of content is entirely on LCO, therefore it is the LCO who is providing the content, maintenance and collection services to the ultimate subscriber whereas the respondent is only providing services to LCO at a single point of his network. The Hon'ble Supreme Court in the matter of *Intercontinental Consultants and Technocrats P. Ltd.(supra)* has laid down that value of taxable services shall be the gross amount charged by the service provider *'for such service'* and the valuation of tax service cannot be anything more or less than the consideration paid as *quid pro quo* for rendering such service. The relevant paragraphs of the said decision of Hon'ble Supreme Court is extracted as under:-

> "24. In this hue, the expression 'such' occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax, the authorities are to find what is the gross amount charged for providing 'such' taxable services. As a fortiori, any other amount which is calculated not for providing such taxable service cannot a part of that valuation as that amount is not calculated for providing such 'taxable service'. That according to us is the plain meaning which is to be attached to Section 67 (unamended, i.e., prior to May 1, 2006) or after its amendment, with effect from, May 1, 2006. Once this interpretation is to be given to Section 67, it hardly needs to be emphasised that Rule 5 of the Rules went much beyond the mandate of Section 67. We, therefore, find that High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider 'for such service' and the valuation of tax service cannot be anything more or less than the consideration paid as quid pro qua for rendering such a service.

> 25. This position did not change even in the amended Section 67 which was inserted on May 1, 2006. Sub-section (4) of Section 67 empowers the rule making authority to lay down the manner in which value of taxable service is to be determined. However, Section 67(4) is expressly made subject to the provisions of sub-section (1). Mandate of sub-section (1) of Section 67 is manifest, as noted above, viz., the service tax is to be paid only on the services actually provided by the service provider."

10. For the sake of clarity and understanding we are analysing the definition of *'cable operator', 'cable services' and "Taxable Service"* as given under the Finance Act, 1994 and the same is reproduced as under:-

> "*Section 65(21): "Cable Operator"* has the meaning assigned to it in clause (aa) of Section 2 of the Cable Television Networks (Regulation)Act, 1995;
>
> *Section 65(22): "Cable Service"* has the meaning assigned to it in clause (b) of Section 2 of the Cable Television Networks (Regulation) Act, 1995;
>
> *Section 65(105)(zs): "Taxable Service"* means any service provided or to be provided, to any person by a cable operator, *including the multi system operator (w.e.f. 10.9.2004)* in relation to cable service."

It means Finance Act, 1994 borrows the definitions of "Cable operator" and "Cable service" from Cable Television Network (Regulation) Act, 1995 which is also reproduced hereunder:-

> Section 2(aa) of the Cable Television Networks (Regulation) Act, 1995 defined *'cable operator'* as under:-
>
> > *"Cable operator"* means any person who provides cable services through a cable television network or otherwise controls or is responsible for the

management and operation of a cable television network".

Section 2(b) of the Cable Television Networks (Regulation) Act, 1995 defined *'cable service'* as under:-

> *"Cable Service"* means the transmission by cables of programs including retransmission by cables of any broadcast television signals."

Board's Circular No.B11/1/2002-TRU dated 1.8.2002 explained the scope of services provided by MSO and LCOs which is as under:-

> "The taxable service in this case is the cable service provided by the cable operators. The programmes broadcast by television channel are received either by Multi System Operator (MSO) or directly by cable operators in the form of signals. Where MSO receives the signals, they first transmit the signals to the cable operators who in turn re-transmit the same to the viewers through the cable network provided by the cable operator. Service tax is liable to be paid by the cable operator providing service to ultimate subscriber of cable service."

In September, 2004 the scope of *'cable service'* was further expanded to include the services of MSO also which has been clarified by the Board's circular No. 80/10/2004-ST, dated 17.9.2004 as under:-

> *"...Extension of service tax on Cable Operators to Multi System Operators*: In cable TV services, broadcast channels transmit television signals to Multi System Operators, who further send them to cable operators. The services provided by the MSOs to the cable operators have been made taxable....."

Section 67 of Finance Act, 1994 is also reproduced hereunder for ready reference:-

> **"SECTION 67. Valuation of taxable services for charging service tax**—(1) Subject to the provisions of this Chapter, where service tax chargeable on any taxable service with reference to its value shall, then such value shall, —
> (i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;
> (ii) …;
> (iii) ….
> (2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.
> (3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.
> (4) ……
>
> Explanation (prior to 01.07.2012) —For the purposes of this section —
> (a) "consideration" includes any amount that is payable for the taxable services provided or to be provided;
> (b) "money" includes any currency, cheque, promissory note, letter of credit, draft, pay order, travellers cheque, money order, postal remittance and other similar instruments but does not include currency that is held for is numismatic value;
> (c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment;
> **Explanation (after 01.07.2012)** —For the purposes of this section,—
> (a) "consideration" includes —
> (i) any amount that is payable for the taxable services provided or to be provided;
> (ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such

> circumstances, and subject to such conditions, as may be prescribed;
> (iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.
> (b) * * * *
> (c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and [book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise."

As per the definition of *'cable operator'* in Cable Television Networks Act, any person who provides cable service is cable operator, therefore it implies that both MSO and LCOs are *cable operators* as MSO is providing cable service to LCOs who in turn providing the same to the ultimate customer/ individual. We are in complete agreement with learned Commissioner that the actual functionality of MSOs and LCOs differ from analogue period to DAS period to the extent that during DAS period, the signals received/purchased by MSO were encrypted whereas in analogue period they were not and for viewing of encrypted signals installation of set top boxes at subscriber's end is a must in DAS period and subscribers' records in the SMS server were also maintained with MSO. What we have gathered from the records is that LCOs received signals from MSOs and ultimate

customers received signals from LCOs, so LCO is the cable operator as well as service provider so far as ultimate customers are concerned.

11. While interpreting the word *'for such service' in* Section 67, the Hon'ble Supreme Court in the matter of *Intercontinental Consultants and Technocrats P. Ltd. (supra)* has laid down that value of taxable services shall be the gross amount charged by the service provider *'for such service'* and the valuation of tax cannot be anything more or less than the consideration paid as *quid pro quo* for rendering such a service. The Hon'ble Supreme Court in the matter of *Association of Leasing and Financial Service Companies vs. Union of India; (2011) 2 SCC 352* also has laid down that service tax is imposed every time service is rendered to the customer/client and thus the taxable event is such exercise/ activity undertaken by the service provider and each time service tax gets attracted. Therefore be it MSOs or LCOs both have to pay service tax on their respective taxable event or we can say on the activity undertaken by them respectively being the service provider i.e. MSOs to LCOs and LCOs to subscribers/ultimate customers. At each stage of such access of broadcast signals, be it by LCOs from MSO or by ultimate customer from LCOs, a different service provider and a different service recipient is present and service tax would be leviable on the taxable event of exercise/activity undertaken by the respective service provider. Even though access to broadcast

through the STBs was provided by MSO, however the interface between the ultimate consumers and cable signals remained with the LCOs only. It is not the case that the respondent had manipulated the accounts/records as borne out from the records of the case placed before us.

12. There is no iota of doubt that LCOs received signals from MSOs (who received the signals from broadcasters) and the ultimate customers/subscribers received signals from the LCOs. We are in complete agreement with the findings of the learned Commissioner that in the post DAS era both MSO and LCOs would fall within the ambit of persons providing taxable services of 'cable service' however the service recipient for both would be different as for the MSOs the recipient is LCOs whereas for LCOs it's the subscribers. It is not disputed that the respondents did not have *set top boxes*, CAS, SMS etc and were using the infrastructure provided by their group company FTPL and also did not have the equipments required for transmitting the signals by LCOs to subscribers and therefore it is clear that the LCOs were utilising their own infrastructure for transmitting signals to the ultimate subscribers. Although access to broadcast through s*et top boxes* were provided by the respondent but the interface between ultimate consumers and cable signals remained with LCOs only. The subscription for the Cable Services is collected by the LCOs from the subscribers against the invoice issued as per the Agreement. The respondent issued invoices on

the LCOs for the eligible revenue share, so the responsibility to pay taxes on the revenue share is on the respective parties. The invoices issued by the MSO on LCO as well as the invoices issued by LCO on subscribers are also placed on record by the respondent. The agreement dated 3.1.2014 between the LCOs & MSO has granted non-exclusive rights to the LCOs to receive signals of its cable services for further re-transmission to the ultimate subscribers. During the period in dispute, the revenue has also raised similar demand on cable operators (LCOs) which was confirmed by the Adjudicating authority therein and when the LCOs approached this Tribunal by way of Appeal, the same was set aside. While allowing one of such appeal filed by one of such cable operator *M/s. Blue Star Communication (supra)* this Tribunal has held that the cable operators are liable to pay service tax only on the subscriptions received by them from the subscribers for providing the services. We are unable to find from the record anything to suggest that the said order of the Tribunal has been stayed or set aside in Appeal thereafter. Accordingly here also it can be concluded that the respondent i.e. MSO is liable to pay service tax only on their share of revenue. It is not the case of revenue that the respondent is receiving amount in any other form from LCOs rather it is the specific case of revenue that LCOs, after retaining their share of subscription, remitting the balance to the respondent being their share of subscription. Owing to the business model of cable operator industry, the MSO is providing cable operator services

to LCO and not to ultimate consumer and hence the MSO would be liable to pay service tax only on the amount received from LCOs whereas LCOs will be separately liable for discharging service tax on gross amount received from the ultimate customers for the service provided by LCO to them. Therefore in view of Section 67 ibid as interpreted by the Hon'ble Supreme Court in the cases cited supra as well as the agreements entered into between the LCOs and MSO and also the Board Circulars issued from time to time we have no hesitation in deciding this issue in favour of respondent and against the revenue-appellant by holding that the respondent is liable to pay service tax only on the gross amount received by them from LCOs.

13. So far as the cross-objections filed by the respondent against the demand of short payment of amount of Rs. Rs.4,72,569/- and denial of Cenvat credit of Rs.1,69,859/- on the ground of non-production of respective invoices by the respondent and of Rs.75,130/- for paying audit fee to its employee & authorised signatory Mr. Rajesh Mehru after invoking the extended period of limitation, are concerned we find that without any discussions and/or proper reasoning the learned commissioner has confirmed the short payment of demand and denied the Cenvat credit to the respondent, which do not find favour with us, therefore we have left with no other option but to set aside the part of the impugned order confirming the short-payment of demand and denial of Cenvat credit alongwith

penalty for which cross-objection has been filed by the respondent and remanding the same to the Adjudicating Authority to decide the issue afresh including the issue of extended period of limitation, after giving proper opportunity to the respondent. The respondent is also directed to produce all the documents before the authority concerned in support of its claim.

14. In view of the discussions made hereinabove, the appeal filed by revenue is rejected and the cross-objections of respondent are accordingly disposed off.

(Pronounced in the open court on 12.10.2022)

(AJAY SHARMA)
Member (Judicial)

(P.V. SUBBA RAO)
Member (Technical)