Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 254 of 2012-SM
(Arising out of OIO-09/VDR-II/MP/SSCSIL/COMMR/2010 Dated-27/07/2010 passed by Commissioner of Central Excise-RAJKOT)

Madhusudan & Co **........Appellant**
Shop No. 1 & 2, Siddhi Vinayak Complex, Moti Tanki Chowk,
Rajkot, Gujarat

VERSUS

C.C.E. & S.T.-Rajkot **........Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

WITH
Service Tax Appeal No. 10223 of 2013
(Arising out of OIA-39-40/2012/COMMR-A-/RBT/RAJ Dated-27/01/2013 passed by Commissioner of Central Excise and Service Tax-RAJKOT)

Madhusudan Co **........Appellant**
Shop No. 1-2, Siddhi-Vinayak Complex,
Moti Tanki Chowk, Rajkot-Gujarat

VERSUS

C.C.E. & S.T.-Rajkot **........Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

APPEARANCE:
None appeared for the Appellant
Shri. Tara Prakash, Assistant Commissioner for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Final Order No. A/ 12229-12230 /2022

DATE OF HEARING:13.12.2022
DATE OF DECISION:21.12.2022

RAMESH NAIR

The issue involved in the present case is that whether the commission received by franchisee for sale of SIM card of BSNL is liable to service tax under the head of Business Auxiliary Service.

2. When the matter was called out, none appeared on behalf of the appellant. However from the record it is observed that this matter has been listed earlier on 21.09.2022 & 27.10.2022, on those dates neither any one appeared nor any adjournment was asked for, therefore, it appears that the appellant is not interested in pursuing these appeals. Accordingly, the appeal is taken up disposal on the basis of records.

3. Shri. Tara Prakash, Learned Assistant Commissioner (Authorized Representative) appearing for the revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by learned AR and perusal of the records, we find that the issue to be decided in these appeals is whether the commission received by the appellant from BSNL for sale of the SIM Card of BSNL is liable to payment of service tax. This issue is no longer *Res Integra* as in the various judgments by this Tribunal held that since the principle i.e. Mobile Service Provider in the present case BSNL has paid the service tax on the entire value of service of SIM Card no further tax can be charged on the commission received by the franchise dealer of BSNL. The following judgments are relevant:-

- 2021 (52) G.S.T.L. 622 (Tri. - Ahmd.)- VIRMATI SOFTWARE AND TELECOMMUNICATIONS LTD.
- 2013 (31) S.T.R. 308 (Tri. - Del.)- C.C.E MEERTU Vs. MORADABAD GAS SERVICE.
- 2013 (30) S.T.R. 634 (Tri. - Del.)- G.R. MOVERS
- 2013 (30) S.T.R. 428 (Tri. - Del.)- DAYA SHANKAR KAILASH CHAND

- 2015 (40) S.T.R. 1135 (Tri. - Del.)- OMAR AGENCIES (HUTCH)
- 2019 (22) G.S.T.L. 223 (Tri. - Mumbai)- RELIANCE COMMUNICATION INFRASTRUCTURE LTD.

5. In view of the above judgments the issue is no longer under dispute and finally settled in favour of the assessee. Accordingly, the demand is not sustainable hence, the impugned orders are set aside. Appeals are allowed with consequential relief.

(Pronounced in the open court on 21.12.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

PRACHI