**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**ALLAHABAD**

REGIONAL BENCH - COURT No. I

**Service Tax Appeal No.1029 of 2011**

(Arising out of Order-in-Original No.61/COMMR./LKO./ST/2011 dated 24/3/2011 passed by Commissioner, Central Excise & Service Tax, Lucknow)

**M/s Vodafone Essar Digilink Ltd.** **.....Appellant**

(Hutch House, 5, Shahnajaf Road, Lucknow)

*VERSUS*

**Commissioner, Central Excise** **....Respondent**

(7-A, Ashok Marg, Lucknow)

**APPEARANCE:**

Shri B.L. Narasimhan for the Appellant
Shri S.P. Singh, Deputy Commissioner, Authorised Representative for the Respondent

**CORAM:** **HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
**HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO.71369/2019**

DATE OF HEARING : 15 July, 2019
DATE OF DECISION : 15 July, 2019

**PER : ANIL G. SHAKKARWAR**

After hearing both the sides duly represented by Shri B.L. Narasimhan learned counsel for the appellant and Shri S.P. Singh learned Deputy Commissioner on behalf of the Revenue, we note that the appellants are provider of telecommunication services. They were providing the said services through prepaid vouchers. The vouchers used to be sold to the distributor and at the time of sale of such vouchers appellant used to discharge service tax liability on the basis of consideration received and the rate of service tax applicable on the date of such sale. On 24 February, 2009 the rate of service tax got reduced from 12% *ad valorem* to 10% *ad valorem*. On the said date appellant took a stock of such vouchers which were already sold by them and which were still lying with their distributor and which were not put into operation by the customers and found that in respect of such vouchers service tax paid was at the rate of 12% *ad valorem* whereas on 24 February, 2009 service tax was reduced to 10% *ad valorem* therefore to pass on the benefit of reduced rate appellant increased the talk time available to the customers. Subsequently for the month of February, 2009, appellant calculated the service tax component which was paid in excess on the clearances made before 24 February, 2009 and adjusted the same amount on tax already paid for the month of March, 2009 as provided by Rule 6 of Service Tax Rules, 1994. This was considered as irregular by Revenue and therefore, proceedings were initiated for recovery of said amount of Rs.54,48,658/- which was considered as excess paid by the appellant as on 24 February, 2009 and adjusted during the subsequent month. On perusal of record we note that learned Commissioner through his Order-In-Original has confirmed the demand by adopting two reasoning. One reason was that procedural requirement of said Rule 6 of Service Tax Rule such as intimation to the Superintendent was not followed by the appellant and other was rate applicable on the date of receipt of consideration was applicable rate in the opinion of learned Commissioner. The learned counsel for the appellant has relied on ruling by Hon'ble Delhi High Court in the case M/s Vistar Construction (P) Ltd. V/s Union of India reported at 2013 (31) STR 129 (Delhi) and submitted that Hon'ble Delhi High Court have ruled through Paragraph 8 of the said judgment that the taxable event in so far as service tax is concerned is rendering of services and at that point of time the rate of service tax applicable in respect of services should be the applicable rate of service tax. He has further relied on final order of this Tribunal in the case of Bharati Tele Ventures Ltd. V/s CCE, Pune reported at 2014 (33) STR 86

(Tri.-Mumbai) wherein in Para 5.9 of the said final order it has been held that the rate of tax prevalent on the date of rendering services is applicable. The learned AR has relied on the impugned order.

2. Having considered the submissions from both the sides and on perusal of record, we note that the issue is no more *res integra* and stands settled through the ruling by Hon'ble Delhi High Court in the case of Vistar Construction (P) Ltd. referred supra wherein it has been held that the taxable event is the rendering of services and the rate applicable on the date of rendering of the services is rate at which service tax needs to be discharged. By following the said Ruling, we hold that the impugned order is not sustainable. We, therefore, set aside the same and allow the appeal.

(Dictated and pronounced in open court)

Sd/-
**(JUSTICE DILIP GUPTA)**
**PRESIDENT**

**Sd/-**
**(ANIL G. SHAKKARWAR)**
**MEMBER (TECHNICAL)**

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