CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/277/2008-DB

[Arising out of Order-in-Appeal No. 29/2008 dated 19/02/2008 passed by the Commissioner of Central Excise, Customs and Service Tax (Appeals), Cochin.]

M/s. DECCAN ASSOCIATES
19/88-B, MSS COMPLEX, AVK NAIR ROAD,
THALASSERY – 670 101.

Appellant(s)

Versus

Commissioner of Central Excise,
Customs and Service Tax CALICUT
CENTRAL REVENUE BUILDING,
MANANCHIRA, CALICUT,
KOZHIKODE, - 673001
KERALA

Respondent(s)

Appearance:

Mr. Rajesh Kumar, CA
HIRAGANGE & ASSOCIATES
#1010, 1st floor(Above Corp.Bank) 26th
Main, 4th T Block, Jayanagar,
BANGALORE - 560041
KARNATAKA

For the Appellant

Mr. N. Jagadish

For the Respondent

Date of Hearing: 31/05/2018

Date of Decision: 31/05/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20779 / 2018

Per : P. ANJANI KUMAR

M/s. Deccan Associates, the appellants, are engaged in distribution of pre-paid cards and recharge coupons owned by

M/s. IDEA Media Communications Ltd., Cochin. The department has contended that the services undertaken by the appellants fall under sub-clause (1) of Clause 19 of Section 65 of the Finance Act, as “Business Auxiliary Services”. The appellants were issued a show-cause notice demanding a service tax of Rs.2,25,568/- and Education Cess of Rs.4,511/- for the period November 2004 to March 2006. The show-cause notice was confirmed by the original adjudicating authority and the appellate authority and hence, this appeal.

2. The appellants contended that the impugned order confirmed the demand considering the nature of activity i.e., of promotion and marketing whereas the actual activity undertaken by them is trading of SIM cards and recharge coupons. It is not denied that the appellants have received incentives and discounts in relation to the sale of the above. The appellant submitted that M/s. IDEA Media Communications Ltd. have already paid the sales tax on the sale of SIM cards. The appellant submitted that in the following cases, it was held by the Hon’ble Tribunal that sale of SIM/recharge cards is not liable to service tax.

- *True Telecom vs. CST: 2017-TIOL-4481-CESTAT-DEL.*
- *Goyal Automobiles: 2016 (43) STR 268 (Tri.-Del.)*

- *Daya Shankar Kailash Chand vs. CCE: 2013 (30) STR 428 (Tri.-Del.) affirmed in Commissioner vs. Daya Shankar Kailash Chand: 2014 (34) STR J99 (All.)*
- *CCE vs. Moradabad Gas Services: 2013 (31) STR 308 (Tri.-Del.)*
- *South East Corporation vs. CCE: 2007 (8) STR 405 (Tri.-Bang.)*
- *R.B. Agencies vs. CCE: 2008 (11) STR 124 (Tri.-Bang.)*
- *R. Venkataramanan vs.CCE: 2009 (13) STR 187 (Tri.-Chennai)*
- *Karakkattu Communications vs. CCE: 2007 (8) STR 164 (Tri.-Bang.)*

2.1 The appellants have also contended that even when the appellants have received incentives and discounts in the course of their trading activity, they are not liable to pay service tax as per the ratio of the following decisions:

- *Kerala Publicity Bureau vs. CCE: 2008 (9) STR 101 (Tri.-Bang.)*
- *Euro RSCG Advertising Ltd. vs. CCE: 2007 (7) STR 277 (Tri.-Bang.)*
- *P. Gautam & Co. vs. CST: 2011 (24) STR 447 (Tri.-Ahmd.).*
- *Mccann Erickson (India) Pvt. Ltd. vs. CST: 2008 (10) STR 365 (Tri.-Del.)*
- *CST vs. Jaybharat Automobiles Ltd.: 2016 (41) TR 311 (Tri.-Mum.)*
- *My Car Pvt. Ltd. vs. CCE: 2015 (40) STR 1018 (Tri.-Del.)*
- *CST vs. Sai Services Station Ltd.: 2014 (35) STR 625 (Tri.-Mum.)*

3. The learned Departmental Representative has invited the attention of the Bench to the fact that there is an agreement

between M/s. IDEA Media Communications Ltd. and the appellant, which included rendering of various services in addition to the sale of SIM cards as brought out in para 6 of the Order-in-Appeal and has reiterated the findings of the original adjudicating authority as well as the appellate authority.

4. We find that the instant case is squarely covered by various case laws cited by the appellants. We find that CESTAT has continuously held that telecom operators discharging service tax on the whole MRP value of SIM cards and recharge cards there could be no further service tax liability on the persons who are dealing / selling the said SIM cards or recharge cards to the public. The ratio adopted was also upheld by Hon'ble Supreme Court in *2015 (37) STR J132* as well as by Hon'ble Madras High Court in *Bharti Televentures Ltd.: 2015 (40) STR 221 (Mad.).*Coming to the contention of the learned DR that there is a specific contract between M/s. IDEA Media Communications Ltd. and the appellants, we find that similar is the issue with all the service providers like BSNL and other operators and the respective dealers as has been elaborately discussed in Tribunal's Delhi order *CCE vs. Moradabad Gas Services: 2013 (31) STR 308 (Tri.-Del.).*

5. In view of the above, the appeal is allowed.

(Operative portion of the Order was pronounced
in Open Court on **31/05/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

rv...