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

Appeal(s) Involved:

Sl. No.	Appeal No.	Appellant	Respondent	Order-in-Appeal/ Order-in-Original
1	ST/10/2009	M/s. Devangi Communications Devangi Complex Jail Circle Shimoga – 577 201.	The Commissioner of Service Tax S1 & S2, Vinaya Marga Siddharathanagar Mysore – 570 011.	OIO No.04(R)/ST/2008-ST dt.04.12.2008
2	ST/128/2009	M/s. Boopalam Electronics Basava Sadan Complex, Nehru Road, Shimoga – 577 201.	-do-	OIO No.04(R)/ST/2008-ST dt.02.02.2009
3	ST/458/2009	M/s. Independent Associates Pioneer Complex Nellikai Road, Near State Bank, Opp. City Bus Stand, Mangalore – 575 001.	The Commissioner of Central Excise (Appeals), V Floor Trade Centre, Bunts Hostel Road, Mangalore – 575 003.	OIA No.90/2009 dt.13.3.2009
4	ST/459/2009	-do-	-do-	-do-
5	ST/2645/2010	M/s. Somaya Marketing No.544, Uma Complex 50 Feet Road, Hanumanthanagar, Bangalore – 560 050.	The Commissioner of Service Tax, 16/1, S.P. Complex, Lalbagh Road, Bangalore – 560 027. & The Commissioner of Central Excise Bangalore-II Commissionerate Central Revenue Building, Bangalore – 560 001.	OIO No.20/10 dt. 24.9.2010
6	ST/2661/2011	M/s. Vinayaka Agencies No.47, Lakshmi Building Markham Road, Ashok Nagar, Bangalore – 560 025.	The Commissioner of Service Tax, 16/1, S.P. Complex, Lalbagh Road, Bangalore – 560 027.	OIO No.115/2011 dt.26.5.2011
7	ST/126/2012	M/s. Magnum Vision No.17, 11th Main, 3rd Block, Jayanagar, Bangalore – 560 011.	-do	OIO NO.165/2011 dt.30.9.2011

8	ST/2665/2012	M/s. Independent Associates Pioneer Complex Nellikai Road, Near State Bank, Opp. City Bus Stand, Mangalore – 575 001.	The Commissioner of Central Excise (Appeals), V Floor Trade Centre, Bunts Hostel Road, Mangalore – 575 003.	OIA No.314/2012 dt.20.7.2012
9	ST/2719/2012	M/s. Devangi Communications Devangi Complex Jail Circle, Shimoga – 577 201.	-do-	OIA No.324/2012 dt.26.7.2012
10	ST/2720/2012	M/s. Devangi Communications BXNK Shoppee Complex I.G. Road, Chikmagalur – 577 101.	-do-	-do-
11	ST/25720/2013	M/s. Devangi Communications Devangi Complex Jail Circle, Shimoga – 577 201.	-do-	OIA No.17/2013 dt.1.2.2013
12	ST/25721/2013	-do-	-do-	-do-
13	ST/21714/2014	M/s. Somaya Marketing No.129, 1st Floor, 50 Feet Road, Hanumanthnagar, Bangalore – 560 019.	The Commissioner of Service Tax, Service Tax Commissionerate, Traffic Transit Management Centre, BMTC Building, Domlur, Old Airport Road, Bangalore – 560 071.	OIA No.170/2014 dt.20.2.2014
14	ST/21546/2015	The Commissioner of Central Excise, 7th Floor Trade Centre, Bunts Hostel Road, Mangalore – 575 003.	Shri V. M. Nayak Benne Sri Ram Arcade, Opp. Head Post Office, Udupi – 576 101.	OIA No.MLR-EXCUS-000-UDDP-JC-APP-HAB-027-2015 dt.9.4.2015
15	ST/21750/2017	M/s. Bhoopalam Marketing Services Pvt. Ltd. "Subhadra Nilaya", No.107, S.P.M. Road, Shivamogga – 577 202.	Commissioner of Central Tax Mysuru, S1 & S2, Vinaya Marga, Siddhartha Nagar, Commissionerate, Mysuru – 570 011.	OIA No.MYS-EXCUS-000-APP-84-17-18 dt.20.9.2017

(Arising out of: as shown in the table above and the the Order-in-Original/Order-in-Appeal were passed by the Commissioner of Central Excise/CCE (Appeals), Mangalore; the Commissioner of Central Excise, Bangalore-II Commissionerate, Bangalore; The Commissioner of Service Tax, Bangalore; the Commissioner of Central Excise (Appeals-II), Bangalore; and Commissioner of Central Excise (Appeals), Mysuru.)

<u>Appearance:</u>

Mr. M.S. NAGARAJA, Advocate
T. RAJESWARA SASTRY &
ASSOCIATAES
NO.1010, 2ND FLOOR,
ABOVE CORP.BANK, 26TH MAIN,
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KARNATAKA

For the Appellant

Mr. Rajesh Kumar, CA
HIRAGANGE & ASSOCIATES
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KARNATAKA

Mr. Pakshirajan, AR For the Respondent

Date of Hearing: 13/08/2018
Date of Decision: 16/08/2018

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

FINAL ORDER No. 21144 - 21158 / 2018

ORDER PER: P. ANJANI KUMAR

The appellants are engaged in distribution of pre-paid cards and recharge coupons purchased from BSNL. 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 notices demanding a service tax on the commission received from BSNL. The show-cause notices were confirmed by the original adjudicating authority and the appellate authority and hence, these appeals.

2. Since the issue involved in all the 15 appeals is identical; therefore, all the 15appeals are being disposed of by this common order. The details of the appeals are given below:

Sl. No.	Appeal No.	Appellant	Period	Service Tax demanded – OIA/OIO	SCN/OIO
1	ST/10/2009	M/s. Devangi Communications	1.7.2003 to 31.12.2004	Rs.3,05,441/-	Rs.2,68,576
2	ST/128/2009	M/s. Boopalam Electronics	1.7.2003 to 31.8.2004	Rs.5,03,696/-	Rs.4,66,385/-
3	ST/458/2009	Independent Associates	1.7.2003 to 30.09.2006	Rs.14,72,406/-	Rs.14,72,406/-
4	ST/459/2009	-do-	01.10.2006 to 01.03.2007	Rs.8,78,697/-	Rs.8,78,697/-
5	ST/2645/2010	M/s. Somaya Marketing	01.04.2004 to 31.01.2009	Rs.62,42,081/-	Rs.62,42,081/-
6	ST/2661/2011	M/s.Vinayaka Agencies	01.04.2005 to 31.03.2009	Rs.1,35,13,593/-	Rs.1,35,13,593/-
7	ST/126/2012	M/s. Magnum Vision	01.04.2009 to 30.09.2010	Rs.3,67,53,085/-	Rs.3,67,53,085/-
8	ST/2665/2012	M/s. Independent Associates	01.04.2007 to 31.3.2009	Rs.21,64,978/-	Rs.21,64,978/-
9	ST/2719/2012	M/s. Devangi Communications	01.10.2007 to 01.03.2009	Rs.8,08,735/-	Rs.8,08,735/-
10	ST/2720/2012	-do-	01.12.2007 to 01.04.2010	Rs.6,24,337/-	Rs.6,24,337/-
11	ST/25720/2013	-do-	01.04.2009 to 31.03.2010	Rs.11,10,285/-	Rs.11,10,285/-
12	ST/25721/2013	-do-	01.04.2010 to 31.03.2011	Rs.2,51,801/-	Rs.2,51,801/-
13	ST/21714/2014	M/s. Somaya Marketing	01.02.2009 to 31.03.2011	Rs.1,83,874/-	Rs.1,83,874/-
14	ST/21546/2015	CCE vs. Shri V. M. Nayak Benne	01.04.2011 to 31.03.2012	Rs.22,14,860/-	Rs.22,14,860/-
15	ST/21750/2017	M/s. Bhoopalam Marketing Services Pvt. Ltd.	2010-11 to 2011-12	Rs.5,61,000/-	Rs.5,61,000/-

3. The appellants contended that the impugned orders 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 appellants further submitted that BSNL had paid service tax on the entire value of the telecom products including the amount of commission paid to the franchisee/appellants. Therefore, the amount paid as commission to the appellants has already suffered service tax under the hands of BSNL. Hence, on this count too, the demands are not sustainable. 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.

- *CCE, Lucknow vs. Chotey Lal RadheyShyam: 2018 (8) GSTL 225 (All.)*
- *Dyal Medicos vs. CCE, Ludhiana: 2017 (49) STR 409 (Tri.-Del.)*
- *Goyal Automobiles vs. CCE, Chandigarh: 2016 (43) STR 268 (Tri.-Del.)*
- *Omer Agencies (Hutch) vs. CCE, Allahabad: 2015 (40) STR 1135 (Tri.-Del.)*
- *Karakattu Communication vs. CCE: 2007 (8) STR 164 (Tri.) affirmed by Hon'ble High Court of Kerala as reported in 2016 (45) STR J209 (Ker.)*
- *Daya Shankar Kailash Chand vs. CCE, Lucknow: 2013 (30) STR 428 (Tri.-Del.) affirmed by Hon'ble High Court of Allahabad as reported in 2014 (34) STR J99 (All.)*

- *CCE vs. Morabad Gas Services: 2013 (31) STR 308 (Tri.-Del.)*
- *GR Movers vs. CCE: 2013 (30) STR 634 (Tri.-Del.)*
- *CCE vs. Morning Star Agencies: 2017-TIOL-2603-CESTAT-BANG.*

4. The learned Departmental Representative has invited the attention of the Bench to the fact that there is an agreement between BSNL and the appellant, which included rendering of various services in addition to the sale of SIM cards as brought out in the impugned orders and has reiterated the findings of the original adjudicating authority as well as the appellate authority.

5. 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 BSNL 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.).*

5.1 We also find that 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.)*

5.2 In view of the discussions above, appeals filed by the appellants survives and the appeal filed by the Revenue needs to be set aside.

6. In view of the above, appeal No.ST/21546/2015 filed by the Revenue is rejected and all other appeals are allowed.

(Order was pronounced in Open Court on **16.08.2018.)**

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER