CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 2669 of 2012

[Arising out of Order-in-Appeal No. 170/ST/Appl/Chd-I/2012 dated 12.07.2012 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh]

M/s ABS Communication **......Appellant**
119-a, Mdb Market, G.T. Road, Jalandhar

VERSUS

Commissioner of Central Excise and ST, Ludhiana **......Respondent**
Central Excise House F Block, Rishi Nagar, Ludhiana, Punjab 141001

APPEARANCE:

Present for the Appellant: Shri Poojan Malhotra, Advocate

Present for the Respondent: Shri Raman Mittal, Authorized Representative

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60202 /2024

DATE OF HEARING: 29.04.2024
DATE OF DECISION: 29.04.2024

PER S. S. GARG

The present appeal is directed against the impugned order dated 12.07.2012 whereby the appeal of the appellant was dismissed for default under Section 35F of Central Excise Act, 1944 as made applicable to service tax vide Section 83 of Finance Act, thereafter, the Hon'ble CESTAT vide stay order no. 55301/2013 dated

09.01.2013 waived the condition of pre- deposit during pendency of appeal.

2. Heard both parties and perused the material on record.

3. The only issue involved in this matter is "whether the appellant was required to pay service tax under the category of "Business Auxiliary Service" as provided in Section 65(19) of Finance Act, 1994 on the alleged commission received from M/s Spice Telecommunications Ltd.

4. The Ld. Counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and binding judicial precedents. He further submits that the appellants were engaged in purchase and sale of SIM Cards, Pre-paid recharge coupons/bucks, quickies etc. of M/s Spice Communication Ltd. M/s Spice Communications had paid service tax on the product sold by appellant and certificate to this effect also appended on the packing of product etc. which is produced in annexure 'B' to the appeal paper book.

5. He further submits that the appellant had their own sale network comprising of sale executive and were themselves selling the said products. The salaries of staff were also paid by appellant. M/s Spice Communications Ltd neither gave any dispatch directions nor products sold under their control/instructions. The appellant created their own dealer network for sale of goods and were making sales to

dealers on credit/cash at their own risk. They maintained stock for their own marketability and penetration in the market. He further submits that it is incorrect to equate amount earned from M/s. Spice Communication Ltd. as commission. The commission is mis-nomer in the instant case, the amount earned infact accrues on account of sale and purchase of goods and is their margin of profit.

6. He further submits that this issue is no more res integra and has been settled by various decisions of the Tribunal and the High Hon'ble Allahabad High Court in the case of Commissioner of CGST & Central Excise Vs. Rama Sales and Services 2018 (12) GSTL 286 (All.) and also in the case of Dyal Medicos vs. Commissioner of C.Ex. & S.T, Ludhiana 2017 (49) STR 409 (T) and Daya Shankar Kailash Chand Vs. Commissioner of C.Ex. & S.T, Lucknow 2013 (30) STR 428 (T) and also submits that the Revenue's appeal in the case of Daya Shankar Kailash Chand was dismissed by the Hon'ble Allahabad High Court as reported in 2014 (34) STR J99 (All.).

7. On the other hand, Ld. DR reiterated the findings of the impugned order.

8. After considering the submissions made by both the parties and perusal of the material on record, we find that the Commission received by the appellant are for sale of SIM Cards and other products of M/s Spice Communication Ltd. We also find that the service tax has already been paid by M/s Spice Communication Ltd. on the product sold by the appellant.

9. Further, we find that this issue is no more rest integra and has been settled by the various decisions of the Tribunal as relied upon by the appellant cited (Supra); in the case of Commissioner of CGST Vs. Rama sales cited (Supra) the Hon'ble Allahabad High Court held that purchase and sale of SIM Cards by franshisee/distributors appointed by telecom companies not leviable to Service Tax under category of Business Auxiliary Service especially when such companies already discharged service tax on gross amount of Such SIM cards and charging any further service tax on same amount would lead to double taxation. Similarly, in the case of Dyal Medicos cited (Supra) it was held by the Tribunal that commission on SIM Cards of BSNL where service tax has already been discharged by BSNL on full value of SIM cards, separate commission is not payable. Further, in the case of Daya Shankar Kailash Chand cited (Supra), the tribunal has held that the activity of purchase and sale of SIM card belonging to BSNL where BSNL discharged the service tax on the full value of the SIM cards, does not amount to providing business auxiliary services and confirmation of demand on the distributor for the second time is not called as per Section 65(19) and 65(105) (zzb) of Finance Act, 1994.

10. We also find that the Department's appeal against the said decision was also dismissed by the Hon'ble Allahabad High Court as reported in 2014 (34) STR J99 (All.).

11. By following the ratio of the above said decisions, we are of the considered view that the impugned order is not sustainable in law and

the same is set aside by allowing the appeal of the appellant with consequential relief, if any, as per law

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash