CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
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PRINCIPAL BENCH – COURT NO.4

Service Tax Appeal No. 51818 of 2018
With
Service Tax Miscellaneous Application No. 50393 of 2024

[Arising out of Order-In-Appeal No. 101 (Rk) ST/JPR/2017-18 dated 28.03.2018 passed by the Commissioner (Appeals) And Additional Directorate, DGGSTI, Jaipur]

S M Appliances Pvt Ltd
Near Pital Factory Opposite Tambi Petrol
Pump Jhotwara Road
Jaipur, Rajasthan : **Appellant**

Vs

Commissioner of Central Excise & Customs,
Central Goods And Service Tax, Jaipur I..
N C R Building. Statue Circle. C-
Scheme Jaipur, Rajasthan 302005 : **Respondent**

APPEARANCE:
Shri Yash Dhadda, CA, Advocate for the Appellant
Shri S. K. Meena, Authorised Representative for the Respondent

CORAM :
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 59402/2024

Date of Hearing: 19.09.2024

Date of Decision: 19.09.2024

DR. RACHNA GUPTA

The Appellant is registered with Service Tax Department since year 2005 as service provider and service receiver as well for the services of erection, commissioning & installation, GTA, BAS and other taxable Services. The Appellant is an authorised dealer of **Tata Sky Ltd.** for distribution of Set Top Boxes and Recharge Coupon Vouchers in Connection with DTH service of **Tata Sky Limited.**
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During scrutiny of appellant's documents, department obscured that the Appellants, except DTH installation charges, have not deposited services tax under the category of Business Auxiliary Services (BAS) on income like Trade Discount and Scheme received. Accordingly department has alleged that service tax amounting to Rs. 21,38,659/- for the period October 2009 to March 2015 on the value of taxable business auxiliary service has not been paid by the appellant. The same was demanded by Show Cause Notice No. 118 dated 24.04.2015 along with the interest and the appropriate penalties. The said proposal has been confirmed by the Order-in-Original No. 163/2016-17/15-2-2017. Being aggrieved, the appellant is before this Tribunal.

2. We have heard Shri Yash Dhadda Charted Accountant (CA) for the appellant and Shri S. K. Meena learned Authorised Representative for the Department.

3. It is submitted on behalf of appellant that the appellant had received great discount/scheme discount from **Tata Sky Ltd** on which the service tax has been deposited by **Tata Sky Ltd** on the full value/MRP hence the appellant are not liable to deposit service tax on the same. Otherwise also the amount of said discount is wrongly alleged as consideration for rendering of business auxiliary services it is further mentioned that the issue involved is already decided by different benches of this tribunal and hence it is no more res-integra decision of **kumar electronics vs. Commissioner of Central Excise, Madurai reported in 2019 (29) G. S. T. L. 463 (Tri.**

Chennai) is relied upon. The order under challenge is accordingly prayed to be set aside and the appeal is prayed to be allowed.

4. Per Contra Leaned DR has submitted that on the basis of agreement and terms & conditions given, department has viewed that appellant undertakes the activity of promotion and marketing of the products of **M/s Tata Sky Limited** hence, constitute taxable service under BAS. Hence, there is no infirmity in the order under challenge (O-I-O) when the demand of service tax is confirmed against the appellant. Findings of O-I-O has been reiterated. Learned DR has relied upon the decision in the case of **Iris Computers Ltd. vs Commissioner of Service Tax Jaipur reported as 2017 (6) G. S. P. L. 525 (Tri. Del)** and has prayed for dismissed of appeal.

5. Having heard both the parties and perusing the record of the appeal and the case law as relied upon by the parties, we note that the impugned order has built its foundation on the assumption that appellants have render "business auxiliary service" in relation to SIM cards and hence are liable to tax on the commission earned by them. At the same time, the impugned order has considered the commission received in discount on sale of recharge and "top-up" coupons as not liable to tax following the decision of the Tribunal in **Commissioner of Central Excise, Meerut vs. Moradabad Gas Service [2013 (31) S.T.R. 308 (Tri-Del-2012-TIOL-2223-CESTAT-DEL** Our attention has also been drawn to the decisions of Tribunal in the case of **GR Movers vs. Commissioner of Central Excise, Lucknow [2013 (30) S.T.R. 634 (Tri-Del.)]** and **Daya Shankar Kailash Chand vs.**

Commissioner of Central Excise & Service Tax, Lucknow [2013 (30) S.T.R. 428 (Tri.-Del)]. The Hon'ble High Court of Allahabad has upheld these two decisions.

6. We observe that in **GR Moves (Supra)** it has been hold that:

"The correct procedure for discharge of the service tax liability by the two parties is that the distributors raise bills for commissions that is due to them along with service tax and service provider/appellant takes Cenvat credit of tax paid by distributors for discharging liability on the telecommunication service provided by appellant. There is no denial to this fact. We hold that, such procedure does not result in extra realization of Revenue. Considering the special nature of the impugned activities and the fact that it can be easily verified that full taxable value of the service provided to customers is subjected to tax, we are of the view that there is no case to undo decisions already taken by the Tribunal in this regard. A contrary approach will result in a difference in value that is taxed for mobile telecom service according to the decision of the Apex Court in the case of ***Commissioner vs. BPL Mobile Cellular Ltd.-2011 (24) S.T.R J175 (S.C.).*** *We also note that this issue has lost relevance for the future because of exemption under Notification 25/2012-S.T.-S. No. 29 for this type of service."*

7. The first contention of the Ld. DR is that the judgments relied upon by the Ld. Counsel for the appellant pertain to BSNL or other telecom SIM cards provides and not to recharge coupon vouchers of DTH operators. But we are unable to agree with this argument

because the logic, on which it was held that no service tax needs to be paid on the amount of commission of the commission agent, is the same in both the cases. Once the service tax has been paid on the M.R.P. no service tax needs to be paid on the commission received by the distributor because it is a part of the M.R.P. If tax is so levied, it amounts to double taxation. This view held by the Tribunal has been upheld by the Hon'ble High Court of Allahabad and, subsequently, followed by the Hon'ble High Court of Madras.

8. The present case, though it pertains to DTH operators, stands on the same footing and the logic, in our opinion, should be applied to these cases as well. It is true that the appellant is providing services to the DTH operators and is getting commission for such services. If the appellant had paid service tax on such commission, the main DTH operator could have availed Cenvat credit of the same thereby proportionately reducing the amount paid in cash by the DTH operator. Therefore the entire exercise is also revenue-neutral. In view of the above, we find that the issue is no longer res-integra. On the SIM cards, recharge coupons etc., where the service tax has been paid on the M.R.P. by the main operator the commission agent/distributor need not pay service tax on the commission received by him because commission also forms part of the M.R.P. on which service tax has already been discharged. This view is already taken by this tribunal in the case of **Kumar's Electronics vs. Commissioner of Central Excise, Maduri reported as 2019 (29) GSTL 463 (Tri. Chennai)**

9. The Revenue has not been able to distinguish the above cases nor has it come up with any contrary decisions and therefore, respectfully following the above decisions, we are of view that the demand is not sustainable.

10. Accordingly, we set aside the impugned order and allow the appeal with consequential benefits, if any, as per law.

(Dictated & pronounced in the open Court)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

KHUSHNUMA