IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order: 18.5.2017

Appeal No. ST/55538/2013-(DB)

(Arising out of Order-in-Appeal No. 129(RDN)ST/JPR-II/2012 dated 30.10.2012 passed by the Commissioner, Customs & Central Excise, Jaipur-II)

M/s Thomas & Company — Appellant

Vs.

CCE, Jaipur-II — Respondent

Appearance

Shri Alok Kothari, Advocate - for the appellant

Shri Sanjay Jain, D.R. - for the respondent

CORAM: **Hon'ble Mr. S.K. Mohanty, Member (Judicial)**
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 53707/2017

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 30.10.2012 passed by the Commissioner, Central Excise, Jaipur.

2. The brief facts of the case are that the appellant herein is the franchisee/dealer of M/s Vodafone Essar Digilink Ltd. for marketing their various telecom services including sale of recharge coupons on commission basis. During the disputed period from April, 2006 to March 2008, the service tax department confirmed the service tax

liability on the appellant under the taxable category of Business Auxiliary Service.

3. The ld. Advocate appearing for the appellant submits that on free supply of recharge coupons, M/s Vodafone Essar Digilink Ltd. had deposited the service tax under the taxable head of telecommunication services. Thus, for the same service provided by the appellant, service tax demand cannot be confirmed under the Business Auxiliary Service. He further submits that since the activity undertaken by the appellant concerns with sale and purchase of SIM cards and other recharge coupons, the same should not fall under the purview of service for the purpose of levy of service tax. To support such stand, the ld. Advocate has relied on the decision of this Tribunal in the case of ***Daya Shankar Kailash Chand Vs. Commissioner of C.Ex. & ST., Lucknow -*** 2013 (30) STR =428 (Tri.-Del.) and in the case of ***Goyal Automobiles Vs. Commissioner of Central Excise, Chandigarh-I -*** 2016 (43) STR 268 (Tri.-Del.).

4. On the other hand, ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order.

5. Heard both the sides and examined the case records.

6. On perusal of the case records, we find that the activity undertaken by the appellant relates to sale and purchase of various goods viz. SIM cards, recharge vouchers etc. Since the activity relates to sale and purchase of the goods, the same in our view will not fall under the purview of service for the purpose of levy of service tax. Further, we find that in the case of ***Daya Shankar Kaishal Chand*** (supra), this Tribunal has held that once the service tax liability has been discharged by one of the service provider, for same category of service, service tax cannot be confirmed under other service. The decision of the Tribunal in the case of ***Daya Shankar Kaishal Chand*** (supra) has also been affirmed by the Hon'ble Allahabad High Court reported in 2014 (34) STR J99 (All.).

7. In view of the above, we do not find any merits in the impugned order. Accordingly, after setting aside the same, we allow the appeal in favour of the appellant.

(Dictated & pronounced in open Court)

(V. Padmanabhan)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)

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