IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Service Tax Appeal No.ST/54983, 54989 & 54990/2014-[DB]

[Arising out of Order-in-Appeal No.65, 67 & 66 (ST)/RPR-I/2014 dated 19.05.2014 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Raipur]

CCE, Raipur …Appellant

Vs.

Sonthalia Cellular, BMS Marketing & Ajay Telecom … Respondent

Present for the Appellant : Mr.Sanjay Jain, DR
Mr. A.K. Singh, DR

Present for the Respondent: Mr.A.K. Batra, CA &
Ms. Vibha Narang, Advocate

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing / Decision : 23.02.2018

FINAL ORDER NO. 50956-50958/2018

PER: S.K. MOHANTY

The issue involved in these appeals is identical and accordingly, the same are taken up for hearing together and a common order is being passed.

2. Brief facts of the case are that the respondent has been appointed as a distributor of the telecom company, M/s Bharati

Airtel Ltd. for the purpose of distributing the pre-paid cellular services provided by such company to the customers through pre-paid SIM Card/ re-charge vouchers/ V-top-up or any other mode, either physical or electronic evidencing talk time services. The Department entertained the view that the services provided by the respondent are classifiable under Business Auxiliary Service. Accordingly, after initiation of show cause proceedings, the adjudged demand was confirmed against the appellant under such category of service. The adjudication order was appealed against by the respondent before the ld. Commissioner (Appeals). The ld. Commissioner (Appeals) vide the impugned orders has set aside the adjudged demand, holding that activity undertaken by the appellant is not a service of commission agent and thus, cannot be taxed under the Business Auxiliary Service. Feeling aggrieved with the impugned orders, the Revenue has preferred these appeals before the Tribunal.

3. Heard both sides.

4. We find that the issue arising out of the present dispute is no more *res-integra* in view of the earlier decision of the Tribunal in the case of Chotey Lal Radhey Shyam vs. CCE & ST, Lucknow - 2015(11) TMI 979-CESTAT ALLAHABAD, M/s.Ascent Poly Films Pvt. Ltd. vs. CCE, Delhi - 2018 (2) TMI 576 CESTAT, New Delhi. The Tribunal in both the cases has held that the appellant is only engaged in trading activity and does

not render any taxable service in the capacity of business auxiliary service. Accordingly, no service tax demand can be confirmed under such category of service.

5. In view of above, we do not find any merits in the appeals filed by Revenue. Accordingly the same are dismissed.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita