# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

**E-Hearing**

**Service Tax Appeal No. 85567 of 2016**

(Arising out of Order-in-Original No. 26/STC–V/SKD/15-16 dated 23.10.2015 passed by the Commissioner of Service Tax-V, Mumbai.)

**Drive India Enterprises Solutions Ltd.** .... **Appellant**
7th Floor, Kamala Executive Park,
Andheri (E),
Mumbai-400 059.

Versus

**Commissioner of Service Tax-V, Mumbai** .... **Respondent**
Utpad Shulk Bhavan, Plot no. C-24, Sector-E,
Bandra Kurla Complex, Bandra (E),
Mumbai-400 051.

Appearance:

Shri Tarun Gulati, Advocate for the Appellant

Shri Pramod Kumar Maurya, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**
**HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/87609/2024**

Date of Hearing: 08.02.2024
Date of Decision: 08.02.2024

***Per: S.K. MOHANTY***

Brief facts of the case are that the appellants herein, are engaged in providing various taxable services, defined under the Finance Act, 1994 and for that purpose, got themselves centrally registered with the jurisdictional Service Tax authorities. During the course of audit of the books of accounts, the officers of Service Tax Department had noticed that the appellants were engaged in the business of procuring and supplying telecommunication equipment, accessories including mobile handsets and other allied and logistic services to M/s Tata Tele Services Ltd. (TTSL); that the appellants had paid service tax on handling charges received from TTSL for storing, warehousing and transportation of goods on behalf of TTSL, but did not pay any service tax on promotion expenses received by them from TTSL on the sale of the handset at the discounted price to the distributors. The Department had claimed that the activities undertaken by the appellants for sale of the handsets at discounted prices to the distributors should be considered as a taxable service, under the category of 'Business Auxiliary Service' (BAS), defined under Section 65(19) of the Act of 1994. Since the appellants did not pay any service tax on account of alleged provision of such service, the Department had initiated show-cause proceedings, which culminated into the Order-in-Original No. 26/STC-V/SKD/15-16 dated 23.10.2015 (for short, referred to as "the impugned order"), wherein the learned Commissioner of Service Tax-V, Mumbai has confirmed service tax demand of Rs.33,78,49,113/- along with interest and also imposed penalties under Sections 77 and 78 of the Act of 1994 on the appellants. Feeling aggrieved with the impugned order dated 23.10.2015, the appellants have preferred this appeal before the Tribunal.

2. Heard both sides and perused the case records.

3. On examination of the case records, we find that the Department had proceeded against various distributors of TTSL for confirmation of the service tax demand on the subsidy amount received for the handsets. The adjudication orders, confirming the service tax demands against the distributors were appealed against by the assessees before the Tribunal and the Tribunal has decided the appeals in favour of the appellants therein, holding that the amount of subsidy paid by TTSL to their distributors for the handsets cannot be considered as provision of any service, more particularly,

the Business Auxiliary Service. The co-ordinate Bench of the Tribunal, in the case of *Balaji Enterprises Vs. Commissioner of Central Excise & Service Tax, Jaipur-I,* vide Final Order No. 51611/2019 dated 20.09.2019 has allowed the appeal, holding that the subsidy paid by TTSL to their distributors for the handsets does not amount to consideration for services rendered, which can be made liable to service tax under the taxable entry of BAS. The relevant paragraphs recorded in the said order are extracted herein below: -

> *"34. The submission made by learned Counsel for the Appellant deserves to be accepted. The Appellant did receive a fixed commission for marketing the services of Tata Tele Services for the works enumerated in schedule A of the Agreement. This schedule does not refer to buying and selling of handsets at lower prices and neither does the Agreement provide for payment of any subsidy, much less for promotion or marketing of Tata Tele Services. The subsidy, on the other hand, is paid to the Appellant by Tata Tele Services to compensate for the loss incurred by the Appellant on the sale of mobile handsets at a lower price and cannot be said to have any relation to the service of promotion or marketing. Thus, in the absence of any services provided by the Appellant to Tata Tele Services, service tax could not have been levied on the amount of subsidy received by the Appellant.*
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> *…….. ……… ……….*
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> *37. In the present case, the Appellant is engaged in the marketing of telecommunication services of Tata Tele Services for which it is receiving a consideration and the Appellant is discharging service tax on the said amount of consideration. The amount of subsidy that the Appellant is receiving on account of sale of handsets at a lower price does not have any nexus with the promotion or marketing of the services provided by Tata Tele Services. It needs to be noted that Tata Tele Services is reimbursing only that amount to the Appellant which the Appellant would have otherwise received from the customer buying the handsets. No service is being provided. The amount of subsidy is merely a compensation and this amounts the Appellant would have received from the customer. In fact, it can be said that the arrangement between the Appellant and Tata Tele Service for selling the handset at a lower price only aids the business of the Appellant because it will be able to sell more handsets.*
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> *38. The submissions of learned Counsel for the Appellant that even if the subsidy is treated as a reimbursement, then too the same cannot be subjected to service tax also deserves to be accepted in view of the decisions of the Supreme Court in Union of India v/s Intercontinental Consultants & Technocrats Pvt. Ltd."*

4. We find that by relying upon the order passed by the Tribunal in the case of Balaji Enterprises (supra), the co-ordinate Benches of the Tribunal in

the case of M/s Agarwal Enterprises Vs. Commissioner of Central Goods and Service Tax & Central Excise, Jaipur [Final Order No. 51013/2023 dated 03.08.2023], M/s Bajrang Associates Vs. Commissioner of Central Excise, Jaipur [Final Order No. 50995/2023 dated 03.08.2023], M/s Bombay Stores Vs. Commissioner of Central Excise, Jaipur [Final Order No. 51001/2023 dated 03.08.2023] and Shree Vinayak Distributors Vs. Commissioner of Central Excise, Jaipur [Final Order No. 51010/2023 dated 03.08.2023] has allowed the appeals, holding that the activities undertaken by the appellants cannot be subjected to levy of service tax under the category of BAS.

5. In view of the fact that the issue arising out of the present dispute is no more res integra, being settled by the orders of the co-ordinate Bench of the Tribunal, the adjudged demands confirmed on the appellants cannot be sustained on merits. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Operative portion of the order pronounced in open court)

**(S.K. MOHANTY)**
**MEMBER (JUDICIAL)**

**(M.M. PARTHIBAN)**
**MEMBER (TECHNICAL)**

Sinha