

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

Regional Bench – Court No. III

Service Tax Appeal No.41198 of 2016

(Arising out of Order-in-Appeal No.10/2016 dt. 28.01.2016 passed by the Commissioner of Central Excise (Appeals-I), Coimbatore)

: Appellant

M/s. Kumar's Electronics

14, UCH School Complex
West Veli Street
Madurai 625 001

VERSUS

: Respondent

The Commissioner of Central Excise

Central Revenue Building,
V.P. Rathinasamy Nadar Road
Bibikulam
Madurai 625 002

WITH

(i) Service Tax Appeal No. 40649 of 2018 (M/s. Kumar's Electronics)

(i) Service Tax Appeal No. 40651 of 2018 (M/s. Kumar's Electronics)

(Arising out of Order-in-Appeal No.9 & 10/2018 dt.29.01.2018 passed by the Commissioner of GST & Central Excise (Appeals), Madurai)

APPEARANCE:

Shri S. Sankaranarayan, Advocate for the Appellant

Shri M. Jagan Babu, AC (AR) for the Respondent

CORAM:

**HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER(TECHNICAL)**

FINAL ORDER NOS. 40847-40849 / 2019

DATE OF HEARING: 13.06.2019

DATE OF DECISION: 13.06.2019

PER : P. VENKATA SUBBA RAO

These three appeals are filed by the appellants against impugned orders as follows :

S.No.	Appeal No.	Impugned order No. & date	Passed by
1.	ST/41198/2016	Order-in-Appeal No.10/2016 dated 28.01.2016	Commissioner of Central Excise (Appeals-I), Coimbatore.
2.	ST/40649/2018	Order-in-Appeal No.9 & 10/2018 dated.29.01.2018	Commissioner of GST & Central Excise (Appeals), Madurai.
3.	ST/40651/2018	Order-in-Appeal No.9 & 10/2018 dated 29.01.2018	Commissioner of GST & Central Excise (Appeals), Madurai.

The appellants herein are engaged in activities of rendering services to DTH broadcasting service providers such as, Sun Direct Private Ltd. Appellant installs the DTH instruments including cards therein and activates the same for which they receive service charges and pay applicable service tax on such charges. In addition, they also sell recharge coupon vouchers received from DTH operators for which they were paid a certain amount as commission. The recharge coupon vouchers carry a maximum retail price inclusive of all taxes and on such price the DTH operator was already discharging service tax. The department was of the opinion that the commission received

by the appellants from the DTH operators towards the sale of recharge coupons is taxable under the head "Business Auxiliary Service". Accordingly, show cause notices were issued and the demands were confirmed by the lower authorities and upheld by the first appellate authority. Hence these appeals.

2. After hearing both sides, it is evident that the short question to be answered in these cases is whether the appellant is liable to discharge service tax on the commission which they have received from the DTH operators for sale of recharge coupons when the DTH operators have discharged service tax on the M.R.P of the recharge vouchers which, logically includes the commission which the appellant has received.

3. Ld. Counsel for the appellant submits that an identical case in respect of *M/s.G.R. Movers* [2013 (30) STR 634 (Tri-Del.)] came up before the Principal Bench of the Tribunal in which it was held that once the BSNL discharged service tax liability on the full value of SIM cards, no service tax is liable to be charged from the distributors on the commission paid by BSNL to them for sale of SIM cards. The logic of the decision is that service tax has already been discharged by BSNL on the full value (M.R.P) and the commission was only a component of such M.R.P. The department's appeal against this aforesaid order was dismissed by the Hon'ble High Court of Allahabad [*Commissioner Vs G.R. Movers* - 2015 (37) STR J132 (All.)]. Ratio of this decision was followed by the Hon'ble High Court of Madras in the case of *Commissioner of Central Excise Coimbatore Vs Bharat Cell* -

2015 (40) STR 221 (Mad.). The ratio was also followed in the case of *CCE Meerut Vs Moradabad Gas Service* – 2013 (31) STR 308 (Tri.-Del.). With effect from 20.06.2012, the Ministry have themselves exempted services of selling agent or distributors of SIM cards or recharge coupon vouchers from the whole of service tax vide Notification No.25/2012-ST dt.20.06.2012. In the present appeals, some portion of the appeals pertains to pre-2012 and some portion pertains to post-2012. Ld. counsel for the appellant argues that as their case is squarely covered by the aforesaid decisions of the Tribunal as well as Hon'ble High Court of Allahabad and Hon'ble High Court of Madras, the issue is no longer *res integra* and they are not liable to pay service tax on the commission which they received for selling recharge vouchers when the main DTH operator has already discharged service tax on the full value (M.R.P) of the recharge vouchers.

4. Ld. Departmental Representative reiterates the findings of the lower authorities and argues that the ratio of the aforesaid judgments was in the context of SIM cards of telecom operators and the recharge vouchers related to them and not with respect to DTH operators and the recharge vouchers sold by them. Therefore the ratio does not apply.

5. With respect to the Notification No.25/2012-ST referred to above, he would submit that a part of the period was prior to this notification. He would further assert that the exemption notification also exempted services of the selling agent or a distributor of SIM

cards or recharge coupon vouchers and not recharge coupon vouchers of a DTH operator. Although "recharge coupon voucher" is not defined in that notification, since it is in continuation of the expression 'SIM cards', such vouchers, evidently refer only to recharge coupon voucher related to SIM cards and not any recharge coupon vouchers. Therefore the appellant is also not covered by this exemption notification post-2012. He further argues that there are two types of services. A service rendered by DTH operator to the ultimate customer whose value is determined by the price of the recharge coupon vouchers. This service is not in dispute. What is in dispute is whether the appellant has rendered a service to the DTH operator and received a commission and whether such commission would amount to rendering 'Business Auxiliary Service'. A plain reading of the definition of 'Business Auxiliary Service' squarely covers the activities of the appellant and therefore the service tax has to be discharged on such amount of commission received by them. It does not matter that the main service provider has discharged service tax on the full value of recharge coupon voucher. If the appellant pays the service tax, the main operator would be eligible to avail cenvat credit of the service tax discharged by the appellant. However, the tax liability *per se* does not get extinguished because the main operator has already discharged service tax on the M.R.P of recharge coupon voucher.

6. We have considered the arguments of both sides and perused the records.

7. The first contention of the Ld.D.R is that the judgments relied upon by the Ld. counsel for the appellant pertain to BSNL or other telecom SIM cards and not to recharge coupon vouchers of DTH operators. 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 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. 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.

7. Respectfully following the ratio of the aforesaid decisions of the Principal Bench of the Tribunal, Hon'ble High Court of Allahabad and Hon'ble High Court of Madras, we find that the impugned orders need to be set aside and the appeals need to be allowed and we do so. Appeals are allowed and the impugned orders are set aside with consequential benefits, if any.

(Operative part of the order pronounced in open court)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)