

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI

Sh. Narinder Kumar, Member (Judicial)

Appeal No. : 993-995/ATVAT/2011
& Appeal No. : 1223-1226/ATVAT/2011

Date of Judgment: 29/06/2022

M/s. Vodafone Essar Mobile Services Ltd.,
C-48, Okhla Industrial Area,
New Delhi- 110020.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Appellant : Sh. Atul Gupta, *Adv., with*
Ms. Neha Choudhary, *Adv.*
Counsel representing the Revenue : Sh. P. Tara.

JUDGMENT

1. This common judgment is to dispose of above captioned seven appeals as common question is involved in all these appeals.
2. Dealer – appellant was earlier known as M/s. Vodafone Essar Mobile Services Ltd. and presently known as M/s. Vodafone Mobile Services Ltd.
3. Dealer is engaged in the development of telecommunication network and provides cellular service under GSM based technology. While providing said service, the dealer supplies



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handset and SIM cards. It also provides recharge coupons through its outlets. For activation of the connection, the dealer charges rental and charges for talk time, security etc.

Appeals No. 993-995/2011

4. The above captioned three appeals No. 993-995/2011 have been filed by the dealer – assessee feeling aggrieved by order dated 19/08/2011 passed by learned Special Commissioner – II – learned First Appellate Authority.
5. Appeal No. 993 pertains to tax period 1997-98; Appeal No. 994 pertains to tax period 1999-2000 and Appeal No. 995 pertains to tax period 2004-05.

Vide impugned order, learned First Appellate Authority upheld the default assessment framed by learned Assessing Authority as regards SIM cards.

As regards recharge coupon, learned First Appellate Authority set aside the default assessment of tax & interest and remanded the matter to learned Assessing Authority to make fresh assessment considering the evidences and arriving at a reasoned conclusion and thereafter levying tax at the appropriate rate.

The appeals were disposed of accordingly.

6. Learned counsel for the dealer – appellant has challenged the impugned order as regards levy of tax on SIM cards for all the



above said three tax periods i.e. assessment years 1997-1998, 1999-2000 and 2004-2005. Learned counsel for the appellant has also challenged the impugned order on the points of remand of the case as regards levy of tax on recharge coupon.

Appeal no.-993 (Assessment year 1997-98)

7. As per record, learned Assessing Authority raised demand of Rs. 24,51,857/- relating to tax under Delhi Sales Tax Act, 1975 (hereinafter referred to as DST Act), as regards the assessment year 1997-98.

Appeal no. 994 (Assessment year 1999-2000)

8. As per record, learned Assessing Authority raised demand of Rs.20,90,608/- towards sales tax, under DST Act 1975, relating to the assessment year 1999-2000.

Appeal no. 995 (Assessment year 2004-05)

9. As per record learned Assessing Authority raised demand of Rs. 12,31,38,610/- relating to tax under DST Act, 1975, as regards the assessment year 2004-05.

Levy of tax as regards SIM card (in all the three appeals)

10. While framing assessment vide order dated 03-04-2008, relating to the year 1997-98, u/s 23 of DST Act 1975, learned Assessing Authority observed as under:-



"In providing the above services there is a transfer of goods of SIM card, prepaid V.C.C., Recharge/cash coupons and telephone instruments. Instruments are purchased by the user. Dealer is supply SIM card to user and charging activation charges which not only includes the activation charges but the price of the SIM card also. The contention of the dealer is that it is a service and not a sale cannot be accepted since SIM is a transfer of property in goods and is a sale. SIM is a device that inserted in any GSM based mobile phones. It is a device to activate the mobile phone. If once a phone is activated through SIM, SIM card can also be transferred to any other GSM based mobile phones.

It can also be used other than by the purchaser of SIM card. As soon as the SIM card is taken out, the mobile phone stops working. In the various pronouncements by the Hon'ble Courts the SIM card has been held to be good. Supplying of SIM card along with activation charges automatically includes the sales price of SIM Card. The SIM card is sold by the license holder (dealer) after purchase to the subscriber through a chain of wholesalers, stockist, dealers, and retails. If SIM card purchased by any of the above are lost, there is no provision for refund and the purchasing dealer losses the value of card. For replacement or duplicate SIM card one has to pay separately. By charging activation charges and providing a SIM card alongwith it becomes a composite contract of sale and service. The component of sale is the price of SIM card. In view of all this I am of the opinion that transfer of SIM card for consideration is sale under DST Act and is liable to sales tax @7% during the year and I tax them accordingly."

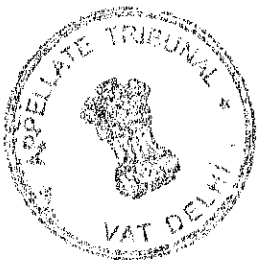


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11. Vide impugned assessment framed by learned Assessing Authority u/s 23 of DST Act, 1975, relating to the period 1999-2000, it was observed as under:-

“In providing the above services there is a transfer of goods of SIM card, prepaid V.C.C., Recharge /cash coupons and telephone instruments. Instruments are purchased by the user. Dealer is supply SIM card to user and charging activation charges which not only includes the activation charges but the price of the SIM card also. The contention of the dealer is that it is a service and not a sale cannot be accepted since SIM is a transfer of property in goods and is a sale. SIM is a device that inserted in any GSM based mobile phones. It is a device to activate the mobile phone. If once a phone is activated through SIM, SIM card can also be transferred to any other GSM based mobile phones.

It can also be used other than by the purchaser of SIM card. As soon as the SIM card is taken out, the mobile phone stops working. In the various pronouncements by the Hon'ble Courts the SIM card has been held to be good. Supplying of SIM card along with activation charges automatically includes the sales price of SIM Card. The SIM card is sold by the license holder (dealer) after purchase to the subscriber through a chain of wholesalers, stockist, dealers, and retails. If SIM card purchased by any of the above are lost, there is no provision for refund and the purchasing dealer losses the value of card. For replacement or duplicate SIM card one has to pay separately. By charging activation charges and providing a SIM card alongwith it becomes a composite contract of sale and service. The component of sale is the price of SIM card. In view of all this I am of the opinion that



transfer of SIM card for consideration is sale under DST Act and is liable to sales tax @7% during the year and I tax them accordingly.”

12. Vide impugned assessment framed by learned Assessing Authority u/s 23 of DST Act, 1975, relating to the period 2004-05, it was observed as under:-

“In providing the above services there is a transfer of goods of SIM card. Prepaid Recharge/cash coupons. Handsets are purchased by the user. Dealer is supply SIM card to user and charging activation charges which not only includes the activation charges but the price of the SIM card also. The contention of the dealer is that it is a service and not a sale cannot be accepted since SIM is a transfer of property in goods and is a sale. SIM is a device that inserted in any GSM based mobile phones. It is a device to activate the mobile phone. If once a phone is activated through SIM, SIM card can also be transferred to any other GSM based mobile phones. It can also be used other than by the purchaser of SIM card. As soon as the SIM card is taken out, the mobile phone stops working. In the various pronouncements by the Hon’ble Courts the SIM card has been held to be good. Supplying of SIM card along with activation charges automatically includes the sales price of SIM card as the SIM card is an instrument used to effect such activation. THE SIM card is sold by the license holder (dealer) after purchase to the subscriber through a chain of wholesalers, stockist, dealers, and retails. If SIM card purchased by any of the above are lost, there is no provision for refund and the purchasing dealer losses the value of card. For replacement or duplicate SIM card one has to pay



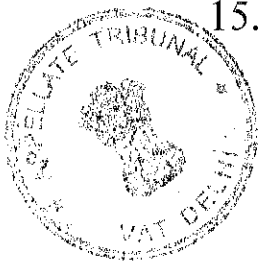
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separately. By charging activation charges and providing a SIM card alongwith it becomes a composite contract of sale and service. The component of sale is the price of SIM card. In view of all this I am of the opinion that transfer of SIM card for consideration is sale under DST Act and is liable to sales tax @8% during the year and I tax them accordingly.”

13. Vide impugned order, learned First Appellate Authority has upheld levy of tax as per the three assessments framed by the learned Assessing Authority in the manner indicated above.
14. Learned counsel for the dealer-appellant has referred to decision in **M/s Vodafone Mobile Service vs. Commission**, in Appeal No. 1509/11, decided on 04-04-2018 by this Appellate Tribunal and submitted that in view of the said decision, the impugned assessments framed by the learned Assessing Authority and the impugned order passed by learned First Appellate Authority deserve to be set aside as regards levy of sales tax, so far as SIM card is concerned.

Appeals No. : 1223-1226/ATVAT/2011 (assessment year 2000-01, 2001-02, 2002-03 & 2003-04)

15. By way of above captioned four appeals dealer company has challenged order dated 23/09/2011 passed by Learned First Appellate Authority. Vide impugned order, Learned First Appellate Authority disposed four appeals Nos. 415,416,417 & 418. The appeals were filed before the Learned First Appellate



Authority challenging assessments made by Learned Assessing Authority relating to assessment year 2000-01, 2001-02, 2002-03 & 2003-04. The assessments were made u/s. 23 of DST Act, 1975.

16. Dealer-appellant is feeling aggrieved only on the ground that the Assessing Authority wrongly levied tax and interest taking into consideration that supply of SIM cards was actually transfer of goods.
17. When the matter came up before Learned First Appellate Authority, as regards SIM Cards the impugned assessments made by Learned Assessing Authority were upheld while observing that decision dated 04/08/2011 in Civil Appeal No. 6319/2011 of Hon'ble Supreme Court in the matter of M/s. Idea Mobile Communication Ltd., V. Commissioner of Central Excise and Customs, Cochin was distinct from the said four appeals being disposed of by him.

As regards levy of tax relating to recharge coupons / cash cards, Learned First Appellate Authority took into consideration decision in M/s. Sunrise Associated v. GNCT of Delhi and Others, Civil Appeal No. 4552/1998, decided by Hon'ble Apex Court and also decision in BSNL's Case decided by Hon'ble Apex Court and set-aside the impugned assessments as regards levy of tax pertaining to recharge coupons/ cash cards, holding that the same are not goods.



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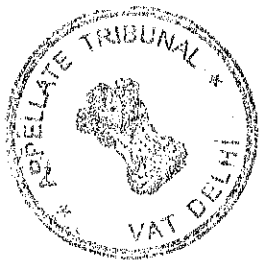
Levy of sales tax as regards re-charge coupons/ cash cards in appeal No. 995 (relating to period of assessment 2004-05).

18. As noticed above, learned Assessing Authority while framing assessment u/s 23(3) of DST Act, relating to recharge coupons/ cash card during the period of assessment 2004-05 levied sales tax @ 8% considering the said item as unspecified goods, and accordingly raised demand.
19. Learned First Appellate Authority, while disposing of appeal No. 494 remanded the matter to the Assessing Authority for afresh assessment, the reason being that the assessment order dated 31/3/2006 passed by the Assessing Authority did not contain any cogent reason as to what is the goods in cash/recharge coupons. Accordingly, learned First Appellate Authority set aside the impugned assessment as regards sale of recharge coupon / cash cards, and remanded the matter.
20. Learned counsel for the dealer – appellant has pointed out that in the other two assessments relating to period of assessment 1997-1998 and 1999-2000, the Assessing Authority took into consideration decision by Hon'ble Apex Court in **M/s. Sunrise Associates**, rendered on 28/4/2006 and in **BSNL v. Union of India** (2006) 145 STC 91, and held that by purchase of cash/ pre-paid cards, subject matter of the transfer i.e. talk time/ electromagnetic waves were not goods.



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21. The contention is that when the Revenue took a decision on the same point, while framing assessments for the period 1997-98 and 1999-2000 that cash/ pre-paid cards/ recharge coupons do not fall in the ambit of goods, the impugned assessment framed on 31/2/2006 relating to period of assessment period of 2004-05, so far as recharge coupons/ cash card is concerned, deserves to be set aside.
22. As noticed above, while framing impugned assessment, Assessing Authority observed that recharge coupon/ cash card is itself a property and exigible to tax because of their sale in the market.
23. Undisputedly, the stand of Revenue in respect of the same item i.e. cash cards / re-charge coupons/ pre-paid cards while framing assessment for the period of assessment 1997-98 and 1999-2000 was that the same are not goods and as such not exigible to sales tax. Learned counsel for the Revenue has very candidly submitted that he has no objection to the setting aside of the impugned assessment as regards levy of sales tax, so far as recharge coupons/ cash cards are concerned. Learned counsel for the Revenue submits that difference in opinion is there since the impugned assessment was made on 31/3/2006 and the other assessments pertaining to the period 1997-98 and 1999-2000 were made in 2008, especially in view of decision in



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M/s. Sunrise Associates case (supra) decided by Hon'ble Apex Court on 28/4/2006.

24. In view of the decision by Hon'ble Apex Court in BSNL's case (supra) and M/s. Sunrise Associates case (supra) by Hon'ble Apex Court and that in respect of the other two assessments, the stand of the Revenue has been that recharge coupon/ cash card/ pre-paid cards are not goods, and also taking into consideration the no-objection by learned counsel for the Revenue to the acceptance of the contention raised by learned counsel for the appellant that these items are not goods, the impugned order upholding the impugned assessment as regard the said items i.e. recharge coupons/ cash cards / pre-paid cards is set aside.

Levy of Sale Tax on Sim Cards

25. Learned counsel for the dealer-appellant has contended that in view of the decision by this Appellate Tribunal in appeal no. 1509/11, the impugned assessments as regards SIM Cards deserve to be set aside. He has further contended that Revenue cannot agitate the point already raised in said appeal i.e. 1509/11 and decided against Revenue. In support of this contention learned counsel has referred to following decisions:

- i. **Birla Corporation Ltd. v. CCE, 2005 (186)ELT 266(SC).**



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- ii. **Jayaswals Neco Ltd. v. CCE, Nagpur**, 2006 (195) ELT 142 (SC).
- iii. **Boving Fouress Ltd. v. CCE, Chennai**, 2006 (202) ELT 389 (SC).
- iv. **CIT v. Excel Industries Ltd.**, 2014 (309) ELT 386 (SC).

26. Reference has also been made to decision dated 11/10/2012 by Learned Additional Commissioner-V, while disposing of the objections presented by M/s. MTNL, as regards tax period 2005-06 & 2006-07.

Vide order dated 11/10/12 passed by Learned Additional Commissioner – V, it was observed that from the records and facts of that case it stood established that the value of SIM cards found part of the activation charges and no activation is possible without a valid functioning of SIM card and further that the value of taxable service is calculated on the gross total amount received by the operator from the subscribers.

Accepting the objections raised by the dealer – objector, M/s. MTNL against the impugned assessment, Learned Additional Commissioner-V set-aside the demand of tax, interest and penalty raised in the said matter while rectifying the previous order dated 24/09/12, exercising powers u/s. 74(B) of DVAT Act, 2004.



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27. A SIM Card or Subscriber Identity Module is a portable memory chip used in cellular telephones. It is a tiny encoded circuit board which is fitted into cell phones at the time of signing on as a subscriber.
28. Admittedly, in Appeal No. 1509/11, this Appellate Tribunal set aside the impugned order passed by learned First Appellate Authority as regards levy of tax so far as SIM cards are concerned. Hon'ble Members of this Appellate Tribunal decided said Appeal no. 1509/11 by observing in the manner as:-

“On the basis of above discussion and in the light of the ratio of the cases referred, we come to the conclusion that lower authorities has wrongly imposed sales tax on value of SIM cards because subscriber had not purchased the SIM card. The subscribers was interested in availing the services of the appellant and the SIM card acts only as a medium for providing the services and the SIM card has no intrinsic value of its own. The sales tax can be imposed when a item is sold and there is no sale in the present case as given in Delhi Sales Act because there is no transfer of property from appellant to the subscriber and there was no consensus-ad-idem as either parties have never contracted for the SIM card but for the services of telecommunication and tax authorities cannot mutilate the contract towards the value of goods and services separately and tax the value of goods and it is also not legally permissible for the tax authorities to tax the whole value of the contract. We are also of the considered view, that interest was wrongly imposed because there was no default made



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by the appellant in the payment of tax. Appellant paid the tax as per the returns filed by him and as there was no failure to pay the tax, hence interest was also wrongly imposed.”

This Appellate Tribunal, in order to arrive at the above findings took into consideration following observations made by Hon'ble Apex Court in **M/s Idea Mobile Communication Ltd. Vs. CCE, Cochin 2011 (23) STR 433:-**

“19, (.....). The position in law is therefore, clear that the amount received by the cellular telephone company from its subscribers towards SIM card will form part of the taxable value for levy of service tax, for the SIM cards are never sold as goods independent from services provided. They are considered part and parcel of the services provided and the dominant position of the transaction is to provide services and not to sell the material i.e. SIM cards which on its own but without the service would hardly have any value at all. Thus, it is established from the records and facts of this case that the value of SIM cards forms part of the activation charges as no activation is possible without a valid functioning of SIM card and the value of the taxable service is calculated on the gross total amount received by the operator from the subscribers. The sales tax authority understood the aforesaid position that no element of sale is involved in the present transaction.” (Emphasis supplied).”

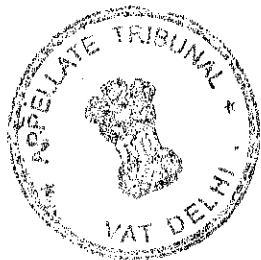
The Appellate Tribunal also relied upon decision in **CCE Cochin Vs Idea Mobile Communication Ltd. 2010 (19) STR**



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18, by Hon'ble High Court of Kerala, wherein it was observed as under:-

“3. (.....). The exclusion claimed by them is only on the value of SIM cards, that too only on the ground that they are free to supply SIM cards as sale of goods and remitted sales tax thereon. In order to consider whether the value of SIM card constitutes taxable service, we have to examine the functioning of this item in the service provided by the respondent. Admittedly SIM card is a computer chip having its own SIM number on which telephone number can be activated. SIM card is a device through which customer gets connection from the mobile tower. In other words, unless it is activated, service provider cannot give service connection to the customer. Signals are transmitted and conveyed through towers and through SIM card communication signals reach the customer's Mobile instrument. In other words, it is an integral part required to provide mobile service to the customer. Customer cannot get service without SIM card and it is an essential part of the service. SIM card has no intrinsic value or purpose other than use in mobile phone for receiving mobile telephone service from the service provider. Therefore, in our view, the stand taken by the BSNL and BPL Mobile Services that it is not goods sold or intended to be sold to the customer but supplied as part of service is absolutely tenable and acceptable. Consequently, we hold that the value of SIM card supplied by the respondent forms part of taxable service on which service tax is payable by the respondent.”(Emphasis supplied)”



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Appellate Tribunal also relied upon decision in **M/s Bharat Sanchar Nigam Ltd. Vs Union of India**, (2006) 145 STC 91, wherein Hon'ble Apex Court observed as under:-

“84. What a SIM card represents is ultimately a question of fact as has been correctly submitted by the States. In determining the issue, however the Assessing Authorities will have to keep in mind the following principles:-

“If the SIM card is not sold by the assessee to the subscribers but is merely part of the services rendered by the service providers, then a SIM card cannot be charged separately to sales tax. It would depend ultimately upon the intention of the parties. If the parties intended that the SIM card would be a separate object of sale, it would be open to the Sales Tax Authorities to levy sales tax thereon. There is insufficient material on the basis of which we can reach a decision. However, we emphasis that if the sale of a SIM card is merely incidental to the service being provided and only facilitates the identification of the subscribers, their credit and other details, it would not be assessable to sales tax.”

In para 16 of decision in Appeal no. 1509/11, this Appellate Tribunal held that learned Assessing Authority and learned First Appellate Authority wrongly levied sales tax on value of SIM cards. In this regard, Hon'ble Members of the Appellate Tribunal observed as under:-



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“On the basis of ratio of above cases and facts of the case, it can be safely said that the intention between the parties in the present case is also of providing services and not sale of SIM cards. There is no sale of SIM cards as a separate object. The SIM cards are being provided to the subscribers only for the purpose of availing the telecommunication services. It is an integral part required to provide mobile services to the customers and as rightly observed by Hon’ble Kerala High Court in the Idea Mobile Case (supra) that SIM card has no intrinsic value or purpose other than use in mobile phone for receiving mobile telephone service from the service provider. Hence, lower authorities, in our considered view, has wrongly charged sales tax on value of SIM cards.”

In appeal no. 1509/11, while dealing with the contention raised by learned counsel for the dealer that there was no consensus-ad-idem in sale of SIM cards and as such the transactions could not be considered sale, this Appellate Tribunal observed in the manner:-

“Appellant’s ld. counsel has further assailed the impugned orders regarding taxability of SIM cards on the ground that there is no consensus-ad-idem for sale of SIM cards. According to appellant, the transaction can be considered to be “sale” when both the parties intend to transfer the property in the goods. In the present case, there is no meeting of mind, for the sale of SIM cards. It has been held in the case of Gannon Dunkerley (supra) that mutual assent is a necessary pre-requisite for transaction to be considered as sale. According to appellant, in the present case, appellant neither intends to sale nor the subscriber ever intends to purchase



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the SIM card. The customer is interested in availing the services of the appellant and the SIM card acts only as a medium for providing the services which does not have intrinsic value of its own. Thus, consensus-ad-idem being essential condition for a transaction to be sale is absent, as either parties have never contracted for the SIM card but for the services of telecommunication. In the instant case, the transaction in question is a supply of SIM cards by the distributors to the subscribers at the time the connection is issued to them. The subscribers do not intend to buy a SIM card per se, rather, they intend to avail the services of the mobile phone connection. SIM card is essential and integral part of the telecommunication system owned by the appellant. In fact, SIM card works as terminal point of telecommunication system through which customer makes access to the network. Hence, there is no consensus-ad-idem in this case between the retailer and the subscriber to sale and buy a SIM card. Hence there is no sale and the appellant is not liable to pay tax for supplying SIM cards to the subscribers of the mobile connection."

29. In **Idea Mobile Communication Ltd.'s** case (supra), following issue arose before Hon'ble Apex Court:



"Whether the value of SIM cards sold by the appellant herein to their mobile subscribers is to be included in taxable service under Section 65 (105) xxx of the Finance Act, 1994, which provides for levy of service tax on telecommunication service OR whether it is taxable as sale of goods under the Sales Tax Act."

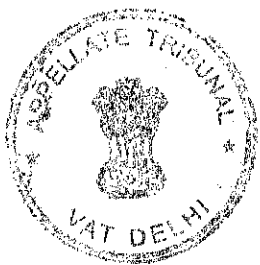
Therein, during the relevant assessment years, i.e., 1997-1999, the appellant was selling ~~the~~ SIM cards to its franchisees and

was paying ~~the~~ sales tax to the State and activating the SIM card in the hands of its subscribers on a valuable consideration and paying service tax only on the activation charges.

The Department of Sales Tax, State of Kerala, included the activation charges as part of the sale consideration of SIM cards on the ground that activation is nothing but a value addition of the "goods" and thus comes under the definition of "goods" under the Kerala General Sales Tax Act, 1963 and accordingly levied sales tax on activation charges. The Department of Central Excise, Eranakulum (Service Tax Department) observed that a mere SIM card without activation is of no use and held that the appellant was liable to pay service tax on the value of SIM card also. In both the cases interest and penalty were levied.

30. In paragraphs 86 and 87 of the Judgment in **BSNL vs. Union of India**, (2006) 3 SCC 1, Hon'ble Apex Court held as under:

"86. In that case Escotel, [(2002) Vol. 126 STC 475] was admittedly engaged in selling cellular telephone instruments, SIM cards and other accessories and was also paying Central sales tax and sales tax under the Kerala General Sales Tax Act, 1963 as applicable. The question was one of the valuation of these goods. The State Sales Tax Authorities had sought to include the activation charges in the cost of the SIM card. It was contended by Escotel that the activation was part of the service on which service tax was being paid and could not be included within the purview



of the sale. The Kerala High Court also dealt with the case of BPL, a service provider. According to BPL, it did not sell cellular telephones. As far as SIM cards were concerned, it was submitted that they had no sale value. A SIM card merely represented a means of the access and identified the subscribers. This was part of the service of a telephone connection. The Court rejected this submission finding that the SIM card was "goods" within the definition of the word in the State Sales Tax Act.

87. It is not possible for this Court to opine finally on the issue. What a SIM card represents is ultimately a question of fact, as has been correctly submitted by the States. In determining the issue, however the assessing authorities will have to keep in mind the following principles: if the SIM card is not sold by the assessee to the subscribers but is merely part of the services rendered by the service providers, then a SIM card cannot be charged separately to sales tax. It would depend ultimately upon the intention of the parties. If the parties intended that the SIM card would be a separate object of sale, it would be open to the Sales Tax Authorities to levy sales tax thereon. There is insufficient material on the basis of which we can reach a decision. However we emphasise that if the sale of a SIM card is merely incidental to the service being provided and only facilitates the identification of the subscribers, their credit and other details, it would not be assessable to sales tax. In our opinion the High Court ought not to have finally determined the issue. In any event, the High Court erred in including the cost of the service in the value of the SIM card by relying on the "aspects" doctrine. That doctrine merely deals with legislative competence. As has been succinctly stated in



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Federation of Hotel & Restaurant Assn. of India v. Union of India: (SCC pp. 652-53, paras 30-31) " '... subjects which in one aspect and for one purpose fall within the power of a particular legislature may in another aspect and for another purpose fall within another legislative power'.

* * * There might be overlapping; but the overlapping must be in law. The same transaction may involve two or more taxable events in its different aspects. But the fact that there is overlapping does not detract from the distinctiveness of the aspects."

In paragraph 88 of BSNL's case, Hon'ble Apex Court held that the Centre cannot include the value of the SIM cards, if they are found ultimately to be goods, in the cost of the service. Consequently, the Hon'ble Court after allowing the appeals filed by Bharat Sanchar Nigam Ltd. and Escotel remanded the matter to the Sales Tax Authorities concerned for determination of the issue relating to SIM Cards in the light of the observations contained in that judgment.

31. In **Idea Mobile Communication Ltd.**'s case (supra), Hon'ble Apex Court observed that the sales tax authorities had themselves conceded the position before the High Court that no assessment of sales tax would be made on the sale value of the SIM Card supplied by the appellant to their customers irrespective of the fact whether they had filed returns and remitted tax or not.....The charges paid by the subscribers for procuring a SIM Card are generally processing charges for



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activating the cellular phone and consequently the same would necessarily be included in the value of the SIM Card.

Hon'ble Apex Court further observed in para no. 19 of decision in Idea Mobile Communication Ltd.'s case, that the amount received by the cellular telephone company from its subscribers towards SIM Card will form part of the taxable value for levy of service tax, for the SIM Cards are never sold as goods independent from services provided; that they are considered part and parcel of the services provided and the dominant position of the transaction is to provide services and not to sell the material i.e. SIM Cards which on its own but without the service would hardly have any value at all.

In that case, Hon'ble Apex Court dismissed the appeal by observing in the manner as:

“Thus, it is established from the records and facts of this case that the value of SIM cards forms part of the activation charges as no activation is possible without a valid functioning of SIM card and the value of the taxable service is calculated on the gross total amount received by the operator from the subscribers. The Sales Tax authority understood the aforesaid position that no element of sale is involved in the present transaction.”

In view of the clear position of law as per decision in Idea Mobile Communication Ltd.'s case (supra) that SIM cards are never sold as goods independent from services provided and are



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part and parcel of the services provided, the same cannot be said to be exigible to sales tax.

32. In view of the above discussion, the impugned order passed by learned First Appellate Authority upholding the impugned assessment relating to transactions of SIM cards provided by the dealer for the purposes of activation of the mobile phones, being not a transaction of sale of goods, and not exigible to sales tax, is hereby set aside.

Conclusion

33. In view of the above findings, all the seven appeals are allowed. Copy of judgment be also placed in other set of appeals No. 1223-1226/2011.
34. File be consigned to the record room. Copy of the judgment be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date: 29/6/2022



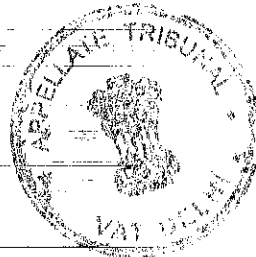
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(Narinder Kumar) 29/6/2022
Member (Judicial)

Appeal no. 993-995/ATVAT/11
& Appeal No. 1223-1226/ATVAT/11 / 29904-11

Dated: 30/6/22

Copy to:-

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| (1) VATO (Ward-) | (6) Dealer |
| (2) Second case file | (7) Guard File |
| (3) Govt. Counsel | (8) AC(L&J) |
| (4) Secretary (Sales Tax Bar Association) | |
| (5). PS to Member (J) for uploading the judgment on the portal of DVAT/GST, Delhi - through EDP branch. | |



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