IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 26.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.7252 of 2012
and
M.P.No.1 of 2012

M/s.N.K.Mariappa Nadar Agencies,
No.19, Bazaar Street,
Chennai - 600049. ...Petitioner

Vs

Assistant Commissioner (CT) (FAC),
Villivakkam Assessment Circle,
Chennai - 600049. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records of the respondent in his proceedings in TNGST No.1362199/2006-07 dated 02.03.2012 and to quash the same as illegal, unconstitutional and against Article 19(1)(g) of the Constitution of India.

For Petitioner : Mr.C.Baktha Siromoni

For Respondent : Mrs.Dhanamadhri, GA

O R D E R

In view of the decision of the Hon'ble Apex Court reported in 2011 TIOL 71 SC-ST in the case of Idea Mobile Communication Ltd. vs Commissioner of Central Excise & Customs, Cochin, the learned counsel for the petitioner submitted that the impugned order relating to recharge vouchers cannot be sustained. The relevant portion of the aforesaid decision reads as follows:-

> "19. There cannot be any dispute to the aforesaid position as the appellant itself subsequently has been paying service tax for the entire collection as processing charges for activating cellular phone and paying the service tax on the activation. The appellant also accepts the position that activation is a taxable service. The position in law is therefore

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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."

2. The Hon'ble Apex Court, in the decision in Bharat Sanchar Nigam Limited vs Union of India reported in AIR 2006 SC 1383, had dealt with the terms 'goods' in relation to the issuance of rechargeable coupons and the SIM Cards in the following manner:-

> "63. It is clear, electromagnetic waves are neither abstracted nor are they consumed in the sense that they are not extinguished by their user. They are not delivered, stored or possessed. Nor are they marketable. They are merely the medium of communication. What is transmitted is not an electromagnetic wave but the signal through such means. The signals are generated by the subscribers themselves. In telecommunication what is transmitted is the message by means of the telegraph. No part of the telegraph itself is transferable or deliverable to the subscribers".

3. In view of the same, the demand made by the respondent for levy of sale tax on rechargeable coupons requires re-consideration.

4. In the light of the above observations, the impugned order dated 02.03.2012 is set aside and the matter is remanded back to the respondent herein for fresh consideration. The petitioner is at liberty to place additional objections and any other supporting documents, which he relies upon before the respondent, during the time of re-consideration. The respondent herein shall extend due opportunity to the petitioner at the time of re-consideration and pass appropriate orders in accordance with law, as expeditiously as possible. Such an

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exercise of passing final orders shall be completed, within a period of 3 months from the date of receipt of a copy of this order.

5. Accordingly, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

hvk

To

Assistant Commissioner (CT) (FAC),
Villivakkam Assessment Circle,
Chennai - 600049.

+1cc to Mr.C.Baktha Siromoni, Advocate Sr.73045
+1cc to the Special Government Pleader Sr.73489

W.P.No.7252 of 2012
and
M.P.No.1 of 2012

pm[co]
srg 01/10/2019

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