

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 464 of 2008-09

(Arising out of order of the learned ACST, Balasore Range,
Balasore in First Appeal No. AA – 07/BA-2006-07
disposed of on 06.05.2008)

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member &
Shri B. Bhoi, Accounts Member-II

M/s. Rohit Sales & Service,
Vivekananda Marg, Balasore ... Appellant

-Versus-

State of Odisha, represented by the
Commissioner of Sales Tax, Odisha,
Cuttack ... Respondent

For the Appellant : Sri R.P. Kar, Advocate &
Sri A.N. Ray, Advocate
For the Respondent : Sri D. Behura, S.C. (CT)

Date of hearing : 06.01.2023 *** Date of order : 03.02.2023

ORDER

The Dealer is in appeal against the order dated 06.05.2008 of the Asst. Commissioner of Sales Tax, Balasore Range, Balasore (hereinafter called as 'First Appellate Authority') in F A No. AA – 07/BA-2006-07 confirming the assessment order of the Sales Tax Officer, Balasore Circle, Balasore (in short, 'Assessing Authority').

2. The case of the Dealer, in brief, is that –

M/s. Rohit Sales & Service deals in trading of electronic goods and home appliances along with BSNL recharge vouchers, handset and SIM cards. The assessment period relates to 2004-05. The Assessing Authority

raised tax demand of ₹1,09,80,045.00 u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act').

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority confirmed the assessment order and dismissed the appeal. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The State files no cross-objection.

3. The learned Counsel for the Dealer submits that the imposition of tax @ 12% on sale of SIM card and recharge vouchers is wrong, arbitrary and contrary to the provisions of law and facts involved. He further submits that SIM card and recharge vouchers are nothing but services, which do not come under the definition of 'goods' so as to be exigible to sales tax. So, he submits that the orders of the First Appellate Authority and the Assessing Authority require interference in appeal. He relies on the decisions of the Hon'ble Apex Court in case of *Bharat Sanchar Nigam Ltd. and another v. Union of India and others*, reported in [2006] 145 STC 91 (SC) and *Idea Mobile Communication Ltd. v. Commissioner of Central Excise and Customs, Cochin*, reported in [2011] 43 VST 1 (SC). He also relies on the order of this Tribunal in *S.A. No. 1425 of 2003-04 & S.A. Nos. 1823-1824 of 2005-06* passed on 21.04.2007 (**M/s. Reliance Telecom Limited v. State of Orissa**).

4. On the contrary, the learned Standing Counsel (CT) for the State submits that the sale of SIM card and recharge vouchers are the consideration for sale of goods and the same is exigible to tax. So, he submits that the First Appellate Authority and the Assessment Authority have rightly levied the tax, which calls for no interference by this forum.

5. On hearing the rival submissions and on careful scrutiny of the record, it transpires that the Assessing Authority rejected the books of

account of the Dealer and assessed the tax liability on best judgment principle by determining the sale of SIM Card and recharge vouchers of BSNL as TTO of the Dealer liable for sales tax @ 12%. He determined the GTO of the firm at ₹12,04,56,545.00 as disclosed by it. The Assessing Authority allowed deduction ₹3,72,74,387.00 towards sale of electronic items and home appliances as first point tax paid goods. The Assessing Authority determined the TTO at ₹8,31,82,158.00 and levied tax @ 12% along with surcharge @ 10%, which came to ₹1,09,80,045.00 and sent the demand notice accordingly. The First Appellate Authority confirmed the assessment with a finding that the matter was subjudiced before the Hon'ble Apex Court.

6. The Assessing Authority assessed the tax on sale turnover of SIM Cards and recharge vouchers of BSNL @ 12% and the Dealer claims that SIM cards are never sold as goods independent of the service provided. They are considered as part and parcel of the services provided and the dominant purpose of the transaction is to provide service and not to sell the materials.

7. In the case of *Idea Mobile Communication Ltd.* cited supra, the Hon'ble Apex Court have been pleased to observe that the amount received by the cellular telephone company from its subscribers towards the 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 the services provided. On such finding, the Hon'ble Supreme Court observed that no element of sale is involved in the transaction of SIM card. The Hon'ble Apex Court have reiterated the said view basing on the decision of the Hon'ble Apex Court in the case of *Bharat Sanchar Nigam Ltd.* cited supra. Basing on the said views of the Hon'ble Apex Court, this Tribunal in **S.A. No. 1425 of 2003-04 & S.A. Nos. 1823-1824 of 2005-06** has already deleted the tax demand and reduced the assessment to the return figure.

8. In view of the foregoing discussions, we are of the unanimous opinion that the Assessing Authority and the First Appellate Authority went wrong in levying tax on the sale turnover of SIM cards and recharge vouchers of BSNL and the same needs interference in appeal. Hence, it is ordered.

9. In the result, the appeal stands allowed and the impugned order of the First Appellate Authority confirming the order of the Assessing Authority is hereby set aside. Excess tax paid, if any, be refunded to the Dealer in accordance with law.

Dictated & Corrected by me

**Sd/-
(G.C. Behera)
Chairman**

**Sd/-
(G.C. Behera)
Chairman**

I agree,

**Sd/-
(S.K. Rout)
2nd Judicial Member**

I agree,

**Sd/-
(B. Bhoi)
Accounts Member-II**