

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70752 of 2017

(Arising out of Order-in-Original No.08/COMMISSIONER/CGST/NOIDA/17-18 dated 30/08/2017 passed by Principal Commissioner, Central Goods & Services Tax, Noida)

M/s Fast Track Auto Care (India) Pvt. Ltd.Appellant
(A-13, Sector-63, Noida-201301 U.P.)
VERSUS

**Commissioner of Central Goods &
Services Tax, NoidaRespondent**
(C-56/42, Sector-62, Noida)

WITH

Service Tax Appeal No.70753 of 2017

Mr. P. C. Suman, DirectorAppellant
(A-13, Sector-63, Noida-201301 U.P.)
VERSUS

**Commissioner of Central Goods &
Services Tax, NoidaRespondent**
(C-56/42, Sector-62, Noida)

AND

Service Tax Appeal No.70754 of 2017

Mr. Devendra Pal Singh, DirectorAppellant
(A-13, Sector-63, Noida-201301 U.P.)
VERSUS

**Commissioner of Central Goods &
Services Tax, NoidaRespondent**
(C-56/42, Sector-62, Noida)

APPEARANCE:

Shri Abhinav Kalra, Chartered Accountant, for the Appellant
Shri Sarweshwar T. Khairnar, Authorised Representative for the
Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NOS.- 70049-70051/2023

DATE OF HEARING : 02 August, 2023
DATE OF DECISION :

P.K. CHOUDHARY:

The facts of the case in brief are that on the basis of third party information, investigation was conducted against the Appellant for the period from 2011-12 to 2014-15. On the basis of scrutiny of the documents submitted by the Appellant, a show cause notice was issued demanding service tax amounting to Rs.4,06,44,637/- alongwith interest and for imposition of penalty under section 78 of the Finance Act, 1994. In the show cause notice, service tax amounting to Rs.270,79,523/- was demanded on the value of material/spare parts sold by the Appellant during servicing of motor vehicles. Written reply to the show cause notice was submitted wherein Appellant inter-alia contested the demand of service tax on sale material/spare parts. The demand as proposed in the show cause notice was confirmed alongwith interest and penalty under section 78 was imposed. Being aggrieved, the Appellant is in appeal before the Tribunal.

2. It is the case of the Appellant that the service tax demanded on the value of spare parts, lubricants, oil etc. sold during the course of servicing of motor vehicles done by the Appellant for its customers, is uncalled for since the Appellant has already deposited under the provisions of Uttar Pradesh Value Added Tax, 2008 on the value of such materials sold by them during servicing of motor vehicles. Learned Chartered Accountant appearing on behalf of the Appellant vehemently argued that the invoice clearly demonstrates that VAT has been charged on 100% value of material utilized during the servicing and service tax has been charged on 100% value on labour charges/service cost. Learned Chartered Accountant relied upon the decision of the Tribunal in the case of M/s Tanya Automobile Pvt. Ltd. vs. Commissioner of Central Excise & Service Tax, Meerut-I 2016 T.I.O.L. 166 (CESTAT-Allahabad) in support of his submissions.

3. Learned Departmental Representative justified the impugned order and prayed that the appeal being devoid of any merit may be dismissed.

4. Heard both sides and perused the appeal records.

5. We find that Appellants have paid Rs.1,59,419/- towards their liability of service tax under reverse charge mechanism (RCM). Photocopies of all the challans have been submitted.

6. We find that the issue is no more *res integra* as the same stands settled by the order of another Division Bench of this in

the case of *Samtech Industries v. Commissioner of Central Excise* - [2015 \(38\) S.T.R. 240](#) (Tri.-Del.), wherein the assessee was providing the service of repairing transformer and was using consumables like transformer oil and also component parts being coil etc., the Tribunal held, in view of the fact that it is not disputed that in respect of the supply of goods, used for providing of service of repair, Sales Tax/VAT is paid, which fact is evident from the invoice on record. It was also observed that when the value of goods used is shown separately in the invoice and on the same Sales Tax/VAT has been paid, the supply of the goods would have to be treated as sale and the transaction which are sale cannot be a part of the service transaction. Accordingly, Service Tax is chargeable only on the services/labour charges and the value of the goods thereunder would not be includible in the assessable value. The Tribunal further observed that Rule 5(1) of Service Tax (Determination of Value) Rules, 2006 has been struck down as *ultra vires*, by the Hon'ble Delhi High Court in the case of *Intercontinental Consultants & Technocrats Pvt. Ltd. v. Union of India & Others* - [2013 \(29\) S.T.R. 9](#) (Del.), it is categorically held that the value of goods used for providing the services which have been shown separately in the invoice, on which Sales Tax/VAT has been paid, cannot be included in assessable value and no Service Tax can be charged on the same.

7. We further find that the decision of the Tribunal in the case of *Samtech Industries supra* has been upheld by the Hon'ble High Court of Allahabad reported as 2015 (38) S.T.R. J 434. We further find that the Central Board of Excise and Customs vide their letter dated 27.09.2013 accepted the legal position and have not filed further appeal in this matter.

8. In view of the above discussion the demand of service tax against the Appellant for the cost of the goods supplied during repair/service does not appear to be sustainable. Accordingly, the demand, interest and the penalties imposed are set aside.

9. As far as imposition of penalties under section 78 A of the Act upon Shri Devendra Pal Singh and Shri P. C. Suman, both directors of the Appellant company is concerned, we find that penalty of Rs.1,00,000/-(One lakhs) each was imposed by the Adjudicating Authority by merely observing that these two Appellants aided and abated Appellant company to suppress and evade payment of service tax. In this regard, it is observed that since the major demand against the Appellant company has already been found unsustainable and said penalty can only be imposed when company is found to be engaged in evasion of service tax and the person in question were knowingly concerned with such contravention. On facts and under the circumstances of the case, ingredients to impose penalty under section 78 A of

the Act does not exist. We therefore, propose to drop the penalty imposed under section 78 A on Shri Devendra Pal Singh and Shri P. C. Suman.

10. In view of the foregoing, we hereby dispose all the appeals under consideration by ordering as under:-

(i) Demand of service tax on the Appellant company is set aside. Penalty under section 78 is also set aside.

(ii) Penalties imposed under section 78 A upon the directors Shri Devendra Pal Singh and Shri P. C. Suman are set aside.

11. Accordingly the appeals filed by the Appellants are allowed with consequential relief, as per law.

(Order pronounced on.....)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

LKS