

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

REGIONAL BENCH

Service Tax Appeal No. 70005 of 2019 [DB]

[Arising out of Order-in-Original No.LKO/EXCUS/000/COM/ST/041/2016-17 dated 08.02.2017 passed by the Commissioner, Central Excise, Service Tax Lucknow]

M/s. Anand Motor Agencies Ltd.

21 Vidhan Sabha Marg,
Lucknow

...Appellant

VERSUS

Commissioner of Customs

7A Ashok Marg,
Lucknow

...Respondent

WITH

Service Tax Appeal No. 70567 of 2019 [DB]

[Arising out of Order-in-Original No.LKO/EXCUS/000/COM/ST/016/2018-19 dated 20.02.2019 passed by the Commissioner, Central Excise, Service Tax Lucknow]

M/s. Anand Motor Agencies Ltd.

21 Vidhan Sabha Marg,
Lucknow

...Appellant

VERSUS

Commissioner of Customs

7A Ashok Marg,
Lucknow

...Respondent

APPEARANCE:

Shri Vineet Kumar Singh, Advocate for the Appellant

Shri B.K. Jain, Authorised Representative for the Respondent

**CORAM: HON'BLE Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE Mrs. RACHNA GUPTA, MEMBER (JUDICIAL)**

DATE OF HEARING: 08/12/2021

PRONOUNCED ON: 04/02/2022

FINAL ORDER NOs. 70065-70066 / 2022

RACHNA GUPTA:

Present order disposes of two appeals originating out of two different Show Cause Notices but involving the similar issues. The details are as follows:-

Appeal No.	SCN Dt.,	Period Involved	OIO/Order under challenge	Amount Involved in Rs.
70005	24.10.2013	2008-09 2011-12	041/2016-17 Dt. 08.02.17	2,75,15,954
70567	20.11.2017	2012-13 2016-17	016/2018-19 20.02.2019	6,64,07,784

2. The appellants herein are engaged in providing authorised service station service from its two units at different premises in Lucknow. They are registered with the Service Tax Department. During a course of inquiry, the appellants were inquired about their Service Tax liability for the respective period of both the aforesaid Show Cause Notices. Vide reply dated 17.03.2017 with respect to the Show Cause Notice dated 20.11.2017 for period 2012-13 to 2016-17 (no such reply was submitted in the case of Show Cause Notice of 24.10.2013), details of income along with the audited balance sheets were submitted. On scrutiny of those documents, the Department observed that the appellants had earned taxable income under various heads which were not shown in their ST-3 Returns. Observing that the services provided by the appellant in respect of the Car insurance policies sold to the customers and receiving

Commission from insurance companies, in arranging finance from Finance Companies and receiving Commission from such Bank / Finance Co. were in agreement with M/s.Maruti Suzuki India Ltd. (MUL herein) for sharing the expenses involved in organizing various event to advertise their products by way of reimbursement of certain part of said expenses that the appellant were providing business auxiliary services to MUL. Observing that the service being taxable but the liability has not been discharged by the appellant that the respective SCNs as mentioned above were served upon the appellant proposing the recovery of service tax of amount of Rs.6,64,07,784/- with respect to Appeal No. 70567 and Rs.2,75,15,954 with respect to Appeal No.70005 along therewith the interest and the penalty was also proposed. The said proposal has been confirmed while the aforementioned respective orders under challenge. Being aggrieved, the appellant is before this Tribunal.

3. We have heard Shri Vineet Kumar Singh, Id. Counsel for the appellant and Shir B.K. Jain, Authorised Representative for the Revenue.

4. It is submitted that the similar inquiry was earlier culminated by the Department by the issuance of Service Tax demand for the period 2002-03 to 2006-07 amounting to Rs.3,30,81,610/- with an equal amount of penalty vide SCN dated 16.10.2008, that too, by invoking the extended period of limitation. The entire demand was confirmed by the adjudicating

authority vide its order dated 30th October, 2009. However, in an appeal, this Tribunal vide its final order No.70112/2015 dated 17.12.2015 had set aside the entire demand. Both the present SCNs have still been issued for the subsequent periods raising the same issues with same allegations of non-payment of service tax on the same issues. It is mentioned that both the SCNs have been issued in sheer ignorance of the judicial discipline. It is submitted that with respect to SCN dated 24.10.2013 the adjudicating authority vide order dated 08.02.2017 has dropped the demand of service tax amounting to Rs.2,04,96,755/. However, the demand was still confirmed for Rs.1,31,318/- on insurance commission, for Rs.36,52,534/- on advertisement expenses reimbursed from MUL and for Rs.23,74,011/- on different job receipts. Demand with respect to the SCN of 20th November, 2017 amounting to Rs.6,64,07,784/- was fully confirmed vide the Order dated 20 February, 2019. In both the SCNs the Department has wrongly invoked the extended period of limitation as all the facts were very much to the notice and knowledge of the Department since the time of the first SCN issued in 2008 for the period 2003 to 2007. The order under challenge is alleged to have ignored the said fact and has also ignored the findings of this Tribunal on the same issues as have been raised in the impugned SCNs. The orders are accordingly, prayed to be set aside.

5. Ld. Counsel has relied upon the final order of this Tribunal

dated 17.2.2015 and upon the decision of Hon'ble Apex Court in the case of **Union of India vs. inter-continental Consultants and Technocrats Pvt. Ltd. reported in 2018 (10) GSTL 401 (SC)**. Both the appeals are accordingly, prayed to be allowed.

6. While rebutting these submissions, it is submitted that subject matter of three of the SCNs are different. Hence, appellant is not allowed to object to the invoking of extended period of limitation by the Department. Other issues, than the issues in the SCN of 16.10.2008 have been raised in the SCN dated 24.10.2013. The third SCN has, in addition, other different issues, which would not have come to the notice had there been no inquiry by the Department, as such, the extended period of limitation has rightly been invoked by the Department and thus, there is no infirmity in the order while upholding the same. The plea of the appellant that they had filed ST 3 returns regularly is not sufficient to deny the invocation of extended period as most of the returns have shown "Nil" taxable value against the services in question whereas huge amounts were being shown in the balance sheet and P&L account with respect to the impugned services. This definitely amounts to suppression of facts. Decision of **Nizam Sugar Factory reported in 2008 (9) STR 314 (SC)** is therefore not applicable to the facts of the present case. While laying emphasis upon the following decisions:

- i. Annapurna Industries vs. CCE [2006 (206) ELT 1041 (T-Mum.)]
- ii. Rastogi Brothers vs. CCE [2007 (5) STR 63 (T-Del.)]
- iii. Saraswatki Air Products vs. CCE [1998 (98) ELT 391 (T-Del.)]
- iv. United Enterprises vs. CCE [2013 (29) STR 605 (T-Kolkata)]
- v. Chhatariya Dehydrates vs. CCE [2020 (33) GSTL 432 (T-Ahmd.)]

Ld. DR has prayed for the dismissal of the impugned appeal.

7. After hearing the rival contentions and perusing the record of the impugned appeal, we observe and hold as follows:-

7.1 The summary of issues on which demand has been raised by the Department vide 3 SCNs is as follows:-

- i) The first SCN was adjudicated by the Learned Commissioner Central Excise & Service Tax Lucknow and the adjudicating authority through its Order in Original dated 30/10/2009 dropped the demand of Service Tax on Incentive received from MUL amounting to Rs 36, 52,967/ and confirmed the demand on all the issues raised in the SCN dated 16/10/2008. Aggreived by the O.I.O, the appellant filed the appeal before the Hon'ble Tribunal and the the Hon'ble Tribunal through its final order dated 15/12/2015 had set aside the entire demand.

- ii) The Second SCN was adjudicated by the Learned Commissioner Central Excise & Service Tax Lucknow and the adjudicating authority through its Order in Original dated 08/02/2017 dropped the demand of Service tax on servicing of Motor Car, Registration Charges & sale of extended warranty but confirmed the demand of Service tax on insurance commission, differential Service tax payable on account of reconciliation of ST3 returns with the Balance sheet, finance payouts, reimbursement of expenses from MUL and denied CENVAT credit availed on Capital goods.
- iii) That while adjudicating the third SCN, the adjudicating authority had confirmed the entire demand without considering the submissions & documents submitted during the course of adjudication made by the appellant.

8. It is observed that vide Final Order of this Tribunal bearing No.70112 of 2015 dated 17.12.2015, the entire demand of SCN dated 16.10.2018 on the several issues as mentioned above stands already been set aside. Apparently, no appeal has been filed by the Department against the said order. The said decision, therefore, stands attained finality.

9. With respect to the SCN dated 24.10.2013, Department itself has dropped the demand except for demand of Service Tax on insurance commissions, advertisement expenses, reimbursement from MUL and on different job receipts. However, the adjudicating authority with respect to the

third SCN of 20th November, 2017 has again confirmed the demand on all the issues raised in the said SCN despite this fact that most of them are similar to those in the prior two notices where all such demands have been already dropped except for the demand with respect to non-conciliation of ST-3 Returns, Service Tax on reimbursement of expenses from MUL, Cenvat Credit on inadmissible documents, and service tax under reverse charge mechanism on entire expenses appearing in audited and profit and loss accounts.

10. The issues which have been already decided by the Final of 17.12.2015, the decision thereof, were to be followed by the adjudicating authorities while adjudicating the impugned both the SCNs. it becomes clear that the adjudicating authorities have absolutely ignored the principles of judicial discipline by not following the binding order passed by this Tribunal. Hon'ble High Court of Karnataka while deciding a **Writ Petition No.37514 of 2017 decided on 22.10.2018 in the case of XL Health Corporation India Pvt. Ltd. vs. Union of India & Others W.P. No.37514/2017 decided on 22.10.2018** by High Court of Karnataka has held as follows:-

"The adjudicating authorities throwing to the winds the principles of judicial discipline by not following the binding order passed by higher forum reflects total callous negligent and disrespectful behaviours. The Court held that same cannot be tolerated – If this kind of lack of judicial discipline which if goes unpunished will lead to more litigation and chaos and such public servants are actually threat to the society."

10.1 In view thereof the confirmation of demand on such issues, which have already been dealt with by this Tribunal and demand has been set aside stands set aside for the impugned SCNs.

11. The adjudication for demand with reference to remaining service is as follows:-

1. Service Tax on Insurance Commission.

Rule 2 (d) of Service Tax Rules 1994 defines a person who is liable for paying service tax as per sub clause (A) thereof such person "in relation to service provided or agreed to be provided by an insurance agent to any person carrying on the insurance business, the recipient of the service". It becomes clear that the recipient of insurance services is liable to pay the service tax. Admittedly appellant herein is the service provider being an insurance agent. The service recipients are the insurance companies for which the appellant had worked. Hence, it were the insurance companies, who were liable to discharge the service tax liability with respect to the amount on insurance commission received by the appellant. A copy of certificate issued by IRDA was also submitted by the appellant. The same has not been considered by the adjudicating authorities below. The confirmation of demand on this issue is therefore held to have been wrongly confirmed.

2. Service tax on finance pay outs.

It is observed and has not been disputed that during the period in question, the appellant had availed cenvat credit on capital goods and had utilized the same for service tax liability on finance pay outs falling under business auxiliary services. The adjudicating authority has failed to consider that the service tax liability with respect to finance pay outs, therefore, stands discharged though partly through cenvat and partly through cash. The demand is, therefore, held to have wrongly been confirmed.

3. Service tax on incentive received from MUL.

It is observed that the appellant purchases vehicles from MUL and sells the same to the buyers. The agreement between appellant and MUL clarifies that appellant works on a principal to principal basis instead of working as an agent of MUL. Appellant, however, has agreed to undertake certain sales promotion activities as well. In the given circumstances, carrying out of such activities by the appellant is for the mutual benefit of the business of the appellant as well as for the business of the MUL. To my opinion, the amount of incentives received on such account cannot be treated as consideration for any service and the incentives received by the appellant therefore, are wrongly held livable to the Service tax. This Tribunal earlier in the case of **Rohan Motors Ltd. vs. Commissioner of Central Excise,**

Dehradun reported in 2021 (45) GSTL 315 has already held as follows:-

"13. *The same view was taken by the Tribunal in **CST v. Sai Service Station Ltd. - 2013 (10) TMI 1155-CESTAT Mumbai reported in 2014 (35) S.T.R. 625 (Tribunal).***

14.*In regard to the period post July, 2012, reliance has been placed by the Learned Counsel for the appellant on an order dated March 23, 2017 passed by the Joint Commissioner, Central Excise in the matter of M/s. Rohan Motors Ltd. (supra) The period involved was from October, 2013 to March, 2014 and 2014-15. The Joint Commissioner, after placing reliance upon the decision of the Tribunal in Sai Service Station Ltd. (supra), observed as follows :*

"I also find that the ratio of the aforesaid case of CCE, Mumbai-I v. Sai Service Station is squarely applicable to the facts of the present case and hold that no service tax can be demanded on the incentive which was in form of trade discounts, extended to the party in terms of a declared policy for achieving sales target. Accordingly, I find that the demand of service tax raised on this count is unsustainable. Thus demand of interest under section 75 of the Act is also no sustainable."

The final order of this Tribunal dated 17.02.2015 has already set aside the demand on this issue for the prior period of 2003-2007. The confirmations of demand on this score is therefore liable to be set aside.

4. Service tax on handling and logistic charges.

It is observed that the appellants had already submitted the invoices along with various other documents, perusal whereof show that VAT has already been discharged by the

appellant on the handling charges. The copy of VAT assessment orders were also provided by the appellant. Once the liability of VAT is discharged, the demand of service tax on the same transaction is not permissible under Indian Constitution. The demand on this issue otherwise has already been set aside by this Tribunal in the Final Order dated 17.02.2015. Confirmation of the demand on this is therefore, liable to be set aside.

5. Service tax on registration charges and extended warranty.

This issue is observed to have already been settled by Tribunal, Mumbai while deciding the case of **Toyota Lakozy Auto Pvt. Ltd vs. CST, C.EX., Mumbai-II & V reported in 2017 (52) S.T.R. 299 (Tri. – Mumbai)** wherein it has already been held that the facilitation charges collected from customers for registration of vehicles with RTO do not qualify to be as an amount towards providing business auxiliary service. The earlier decision in the case of **Wonder Cars Pvt. Ltd. vs. Commissioner of Central Excise, Pune reported in 2016 (42) STR 1055** and in the case of **M/s. Arpana Automotives Pvt. Ltd. vs. Commissioner of Customs & Central Excise reported as 2016 (43) STR 397**, it was held as follows:

"7. In our considered view helping the purchaser with registration with the RTO, cannot be any consideration by Business Auxiliary Service, in view of the foregoing, we hold the Service Tax demand of the amount retained by the appellant in respect of RTO registration fees is not sustainable. The impugned order is set aside. This Bench in the case of Wonder Cars Pvt. Ltd. v. Commissioner of Central Excise, Pune-I - 2016-TIOL-190-CESTAT-MUM has held that

amount collected as extra charges for RTO registration is not covered under "support services of business and commerce".

8. In view of the foregoing, the Service Tax liability confirmed under Business Auxiliary Service for the amount of RTO registration fees is set aside. As regards the penalty imposable, we find the Service Tax liability of the amounts received from the various financial institutions, whether is taxable otherwise was settled by the Larger Bench, there were two different streams of the decisions contradicting each other. As the issue needs to be settled by the Larger Bench, the appellant having discharged Service Tax liability and interest thereon, this is a fit case for invoking Section 80 of the Finance Act, 1994 to set aside penalties. Invoking the provisions of the Section 80 of the Finance Act, 1994, we set aside the penalties imposed by the adjudicating authority."

In view of the above, this issue also remains no more *res integra*. The confirmation of demand on this count is also held liable to be set aside.

6. Service tax on consumables used during the course of servicing of the vehicles.:

The appellant vide its letter dated 7th March, 2019 had submitted documents with respect to repair and maintenance of computer, building, plant and machinery. Documents with respect to security expenses, travelling expenses, legal expenses, freight expenses have also been submitted by the appellant but the orders under challenge are observed to not to have considered those documents also the challans amounting to deposit of Rs.4,16,35,200/- during the entire disputed period. The challans summary as submitted is sufficient to show

that excess amount of service tax pertaining to business auxiliary services on this count stands already paid by the appellant. Departments own verification report in respect of the reply submitted by the appellants in respect of SCN dated 20.12.2017 as was called by Superintendent CGST, Lucknow from Jt. Commr., CGST, Lucknow is also produced by the appellant. The said report dated 21.02.2019 also confirms the payment of service tax in lieu of business auxiliary service and repair, reconditioning of motor vehicles by 23 challans as mentioned in the said report which were found duly included in the list of 265 challans amounting to a total of Rs.4,13,40,105/-. Both the orders under challenge have been passed prior to the said verification report. However, in the light of said verification report, it stands clear that the demand on this account also cannot be confirmed.

7. Non Reconciliation of ST-3 Return with Balance Sheet and Cenvat Credit on Inadmissible Documents.

The verification report as mentioned above has verified that total 8 ST-3 Returns were filed by the appellant during the financial year 2012-13 to 2015-16. The said Returns reflect the duty payment. The report also verifies that the duty paid challans mentioned in the ST-3 returns filed are also available in the ACES data. As per those ST-3 Returns, it is verified that the appellant has not availed any cenvat credit against the capital goods except they availed the credit against the input services received directly. Departments own verification report is,

therefore, held to have falsify the confirmation of the demand on this count by the adjudicating authorities below. The confirmation is according liable to be set aside.

8. Reimbursement of Expenses from MUL.

The appellant had duly submitted the affidavit issued by its Director dated 10.04.2018 wherein it has been specifically deposed as follows:-

- i. That during the course of trading of vehicles, the Noticee Company had offered discounts to their customers and later on such discounts were reimbursed by the MUL.
- ii. That all such reimbursements related to discounts received from MUL were shown in our audited books of accounts under the Head "Reimbursement from MUL".
- iii. That entire amount shown as "Re imbursement from MUL" relates to trade discount received from MUL on Sale of vehicles on which VAT & excise duty have already been discharged.

The statutory auditors of the appellants had also issued a certificate after examining and auditing the books of accounts and it has been certified as follows:-

"During the course of audit we found that the discounts offered by the Anand Motor Agencies Limited to their customers were reimbursed to them by the Maruti Suzuki Limited (MUL) in the course of trading of Cars on Principal to Principal basis. The entire amount shown in

the audited Profit & Loss Accounts for the above mentioned years under the Head "Re imburement from MUL" relates to "discount / incentives" received from MUL."

The issue is no more *res integra* as has already been discussed above with respect to the decision of this Tribunal in **Rohan Motors Ltd. (supra)** case. The adjudicating authorities below are held to have ignored the decision on this issue arrived at by this Tribunal. The adjudicating authority are held to have violated the principles of judicial discipline. The Hon'ble Apex Court in the case of **Union of India vs. Kamlakshi Finance Corporation Ltd. reported in 1991 (55) ELT 433 (SC)** has held as follows:-

"The Supreme Court noticed that the order passed by the Assistant Collector not only ignored the order of the Collector (Appeals) remanding the matter, but also distinguished the decision of the Tribunal by observing that the decision of the Tribunal had not been agreed to by the Department as an Appeal had been filed in the Supreme Court. The assessee filed a writ petition in the Bombay High Court to challenge the said order of the Assistant Collector. The High Court not only quashed the order passed by the Assistant Collector but also directed the Department to allocate the matter to a competent officer for passing a proper order. It is against this decision of the Bombay High Court that the Union of India preferred an Appeal before the Supreme Court. The Supreme Court observed as follows :-

The High Court has, in our view, rightly criticized this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasized that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant

Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not acceptable to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws."

Hence the confirmation of demand on this score also cannot sustain.

9. Service tax under reverse charge mechanism on the expenses appearing in audited profit and loss account.

The demand under RCM has been raised by the Department on security services. It is observed that the adjudicating authority has failed to consider the fact that payment under RCM for such services is applicable only in case of non-corporate entities. The appellant has provided sufficient documents to show that the services of security agencies have been availed by the appellant only from the private limited companies and in some cases salary were paid to the permanent employees of the companies who were working as Security Guards in the appellants own company. Hence confirming the demand under RCM for security agencies is held sustainable. The demand of service tax under RCM on repair and maintenance service is also not sustainable as the parties have failed to consider that those expenses pertaining to the purchase of material spare parts and wages paid to the concerned person without deploying any

contractor. Travelling expenses also have been wrongly confirmed under RCM, despite the apparent fact that those expenses pertain to the purchase of rail tickets, air tickets and conveyances expenses of the employees of the appellant. Similarly demand of service tax on legal and professional expenses under RCM is not sustainable as the documents produced by the appellant clarifies that those expenses pertain to the payment of the paid to the banks for enhancement and renewal of limits and also for payment to Chartered Accountants and other technical consultants. All such expenses have duly been mentioned in their profit and loss account which were duly got verified vide the verification report of 21.02.2019 as was submitted by Jt. Commissioner, CGST. The demand on this account is also therefore, held not sustainable.

12. As a result of entire above discussion, it is clear that the demand has wrongly been confirmed vide both the orders under challenge. The orders under challenge are liable to be set aside.

13. Coming to the issue of invoking extended period of limitation, it is not denied that the records of appellant were earlier also audited for the period 2003-2007 and an earlier SCN of 16.120.2008 was issued upon the appellants. It is also not denied that the ST-3 Returns were regularly being filed by the appellant. Department own verification report verifies the availability of the duty paid challans as mentioned in those ST-3 Returns in ACES data. It becomes abundantly clear that the

entire facts were already in notice of the Department and that there is no suppression on part of the appellant. Rather an amount totaling to Rs.4,13,40,105/- stands already deposited by the appellant as per the aforesaid verification report. The question of any evasion which entitles Department to invoke extended period of limitation does not at all arise. It is accordingly, held that the Department has wrongly invoked the extended period of limitation. The Hon'ble Apex Court in the case of **Tamil Nadu Housing Board reported in 1995 Supplementary (1) SCC 50** has held that powers to extend period from one year to five years are exceptional powers, hence, have to be constructed strictly. It was held that fraud, collusion etc. and intention to evade duty must concur. As already held above, nothing of this sort is apparent on part of the appellant. It is held that the department has wrongly invoked the extended period of limitation. This Tribunal in the case of **Mahakoshal Beverages Pvt. Ltd. vs. CCE, Belgaum.. Reported as 2006 TIOL 939** has held that when Department has not taken into account the payment already made by the appellant for the disputed period invoking the larger period on part of the Department while issuing show cause notice is not correct. Accordingly, it is held that department has wrongly invoked the extended period of limitation. Both the SCNs are therefore, held to be barred by the period of limitation.

14. From the entire above discussion, it has been held that the demands on several counts have wrongly been confirmed. The

Adjudicating Authority is rather held to have violated the principles of judicial discipline. The SCN is held to be barred by time. Both the orders under challenge are, therefore, hereby set aside. Consequent thereto, both the appeals stand allowed.

[Pronounced in the open court on 04.02.2022]

Sd/-

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Sd/-

(RACHNA GUPTA)
MEMBER (JUDICIAL)