CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.200 of 2010

(Arising out of Order-In-Original No. 63-COMMR-LKO-ST-2009, Dated - 29/10/2009 passed by Commissioner (Appeals) CGST & Central Excise, Noida)

M/s Anand Moters Agencies Ltd. **.....Appellant**
(21, Vidhyan Sabha Marg,
Lucknow-226001)

VERSUS

Commissioner, Central Excise & Service Tax, Lucknow
....Respondent
(7-A, Ashok Marg, Lucknow-226001)

APPEARANCE:

Shri Vineet Kumar Singh, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

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

FINAL ORDER NO.-70832/2024

DATE OF HEARING : 09.12.2024
DATE OF DECISION : 09.12.2024

SANJIV SRIVASTAVA:

This matter has been heard on Remand Order of the Hon'ble High Court in Central Excise Appeal No.07 of 2016 dated 13.04.2017. The relevant Paragraphs of the Order are reproduced below:-

> *"3. Appeal was admitted on following two substantial questions of law:*
>
> *"(1) Whether the Customs Excise & Service Tax Appellate Tribunal, Allahabad is correct in allowing the appeal of the respondent and considering Sale of Extended Warranty, Consumer Care Services of Registration of Vehicles, Agency Commission from Maruti Udyog Ltd. and Commission received from DGS&D is not taxable service?*

(2) Whether the Customs Excise & Service Tax Appellate Tribunal, Allahabad is correct in setting aside the Order in Original dated 30/10/2009 without giving any finding on service tax liability of the respondent on Agency Commission from Maruti Udyog Ltd., DGS&D and non-registration of the respondent's unit No.1 i.e. 21 Vidhan Sabha Marg, Lucknow?"

4. With regard to Question (1), learned counsel appearing for Revenue stated that issue of Sale of Extended Warranty and Consumer Care Services of Registration of Vehicles has already stand adjudicated against Revenue and with regard to Agency Commission from Maruti Udyog Ltd. and Commission Received from DGS&D, these two aspects are already subject matter of Question (2), therefore, Question (1) is not pressed.

5. With regard to Question (2), we find that Commissioner of Central Excise & Service Tax, has said as under:

"Agency Commission & DGS&D Commission by MUL: Agency Commission is amount paid by MUL for promoting the sales of vehicles when a new brand/ new version of vehicles is launched. M/s MUL vide their letter dated 12.06.08 have explained that in cases of DGS&D sale, the dealer's act as commission agent as the transaction directly takes place with buyer. The noticee have also not disputed the issue. This is covered under sub-section (1) of definition of Business Auxiliary Services and the notices are liable to pay service tax amounting to Rs. 24,527.00.

On the point of commission received for direct sale under the DGS&D contracts, M/s MUL have stated that when Government Department wants invoicing directly from the manufacturer to cater to this category of customers, Maruti's sale transaction is directly with the buyer and dealers act as agents on dealer commission. The Noticee are liable to pay service tax amounting to Rs. 18.252.00 on direct sale covered under DGS&D instructions."

6. In the order passed by Tribunal, we do not find any discussion on this aspect at all and Sri Sri Pradeep Agarwal, learned counsel appearing for respondent also could not show anything where this aspect has been dealt with. Hence, instead of answering Question (2), at this stage, we are remanding the matter to Tribunal to consider this aspect and findings of Commissioner of Central Excise, and after hearing both parties pass order in accordance with law within two months from the date of production of a certified copy of this order.

7. Appeal stands disposed of accordingly."

2.1 We have heard Shri Vineet Kumar Singh, Advocate for the Appellant and Shri Santosh Kumar, Authorized Representative for the Revenue.

2.2 Learned counsel for the Appellant submits that admittedly they have never disputed that liability arising out of the 'Agency Commission & DGS&D Commission by MUL'. In fact said amounts have been paid.

2.3 Learned Authorized Representative do not dispute the same.

3.1 We find that in the order of the Hon'ble High Court itself it is noted that the Commissioner has recorded that the Appellant do not dispute this liability of Rs 42,779/- which arises by 'Agency Commission & DGS&D Commission'. That amount was not even in dispute before the Tribunal at the time of Original Appeal. Hence, there was no finding recorded in the order of the tribunal.

3.2 In the impugned order while discussing the case of Noticee No 1, in respect of **"Miscellaneous Receipt on Account of Sale of Anti Rust etc."** following has been recorded:

> *The service tax liability on the miscellaneous income shown in the balance sheet under the head "other income" on the basis of balance sheet for the year 2003-04, 2004-05, 2005-06 and 2006-07 was assessed to Rs 69,03,750.00. This liability has been assessed on the following misc receipts:*
>
> *(1) Sale of Anti Rust*
> *(2) Handling Charges*
> *(3) Misc. Income*
> *(4) Sale of Extended Warranty*
> *(5) Trade Discount*
> *(6) Earned Agency Commission*
> *(7) DGS&D commission by MUL*
>
> ****
>
> *To sum up the noticee are liable for payment of service tax in respect of receipt of amount on account of handling*

charges, sale of extended warranty, agency commission, DGS&D commission, as detailed hereinfra:

Sl No	*Issues*	*Amt received during 2003-04 to 2007-08*	*S Tax payable (calculated at applicable rates at relevant time)*
1	*Handling Charges*	*12,77,690.00*	*1,28,210.00*
2	*Sale of Extended Warranty*	*1,43,39,425.00*	*15,35,529.00*
3	*Agency Commission*	*2,55,930.00*	*24,527.00*
4	*DGS & D Commission*	*1,86,550.00*	*18,252.00*
	Total	*1,60,59,595.00*	*17,06,518.00*

The sale of anti rust, trade discount and miscellaneous income would not attract service tax for the reasons discussed supra. Thus noticee are liable for payment of service tax amounting to Rs 17,06,518.00 out of Rs 69,03,750.00 demanded from them in the notice.

3.2 Against the same Noticee impugned order determined service tax liability of Rs 6,04,439.00 against demand made in respect of **"Customer Care Services"**.

3.3 Thus a total demand of Rs 23,10,957.00 (Rs 17,06,518.00 + Rs. 6,04,439.00) was confirmed against the Noticee No 1 by the impugned order. Demand confirmed against the appellant was inclusive of the admitted demand of Rs 42,799.00 against Agency Commission (Rs 24,527.00) and DGS&D Commission (Rs. 18,252.00).

3.4 Tribunal has vide Final Order No 70112/2015 dated 17.12.2015 set aside the entire demand inclusive of the admitted demand which was not under challenge. In para 7 of this order following is observed:

"7. ….. Accordingly, we allow the appeal and set aside the impugned order. The appellant will be entitled to consequential benefit, if any in accordance with law."

3.5 Hon'ble High Court has remanded the matter for reconsideration of the said demand. Appellant do not dispute the said demand in this remand proceedings as the same was never under challenge even in the appeal filed by them. They have admitted this demand of Rs 42,799/- even at the time of adjudication. Thus we uphold the demand made in respect of this amount and set aside the impugned order in respect of all other demands made as the issue in respect of those has not been remanded for reconsideration as per the order of Hon'ble High Court.

4.1 Appeal is disposed of in above terms.

(Dictated and pronounced in open court)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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