CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH

Service Tax Appeal No. 70567 of 2019

[Arising out of Order-in-Original No.LKO-EXCUS-000-COM-ST-016-2018-19, dated -20/02/2019 passed by the Commissioner, Central Goods & Service Tax & Central Excise, Lucknow]

M/s. Anand Motor Agencies Ltd. **...Appellant**
(21 Vidhan Sabha Marg,
Lucknow)

VERSUS

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

APPEARANCE:

Shri Vineet Kumar Singh, Advocate for the Appellant
Shri Manish Raj, Authorised Representative for the Respondent

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

DATE OF HEARING: 10.01.2025
DATE OF DECISION: 10.01.2025

FINAL ORDER NO.70039/2025

SANJIV SRIVASTAVA:

This appeal is directed against the Order-In-Original No. LKO-EXCUS-000-COM-ST-016-2018-19, dated -20/02/2019 passed by the Commissioner, Central Goods & Service Tax & Central Excise, Lucknow. By the impugned order following has been held:-

> *"30.1 I conf'rm the demand of Service Tax amounting to Rs.6,64.07.784/- (Rupees Six Crore. Sixty Four Lakh, Seven*

Thousand, Seven Hundred and Eighty Four only) inclusive of various Cess as applicable on M/s Anand Motor Agencies Limited having their registered office and Head Office at 21 Vidhan Sabha Marg, Lucknow under Section 73 of the Finance Act, 1994 read with Section 142 and 17 of the CGST Act. 2017.

30.2 Interest at appropriate rate under Section 75 of the Finance Act, 1994 read with Section 142 and 174 of the CGST Act. 2017 on the amount of Service Tas mentioned at Para 30.1 above shall be recovered from them,

30.3 also impose Penalty of Rs.6.64,07,784/- (Rupees Sis Crore. Sixty Four Lakh. Seven Thousand, Seven Hundred and Eighty Four only) upon them under Section 78 of the Act ibid read with Section 142 and 174 of the CGST Act, 2017 for non-payment of service tax as mentioned at 30.1 above.

30.4 I also impose Penalty of Rs.20,000/- (Rs: Twenty Thousand Only) upon them under Rule 76 of Service Tax Rules, 1994 read with Section 70 of the Finance Act. 1994, for not filing the ST-3 return for the period April, 2012 to June. 2012."

2.1 This appeal was earlier decided by the Tribunal vide Final Order No.70065-70066/2022 dated 04.02.2022. Tribunal vide the Final Order held as follows:-

"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."

2.2 Aggrieved Revenue filed appeal before the Hon'ble Allahabad High Court being Central Excise Appeal No.02 of 2022. The Hon'ble High Court vide its order dated 08.08.2022 remanded the matter back to the Tribunal holding as follows:-

<u>*Order on Admission*</u>

*"1.**************

2. Having heard learned counsel for the parties and gone through the record, the appeal is admitted on the following substantial question of law:-

"1. Whether the CESTAT has erred in overlooking the fact that its Final Order No.70112/2015 dated 17.12.2015 on similar issues did not attain finality and was appealed against by the Revenue before Hon'ble High Court, Lucknow. Further Hon'ble High Court remanded the matter back to the Tribunal, Allahabad for taking decision afresh with certain directions vide their order dated 13.04.2017 which is still pending for final decision at Hon'ble Tribunal, Allahabad.?"

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5. The respondent herein is engaged in providing authorized service station service from its two units at different premises in Lucknow. They are registered with the Service Tax Department. During the course of inquiry about their service tax liability they were enquired about their service tax liability for the periods 2012-13 to 2016-17 vide show cause notice dated 20.11.2017. The said show cause notice was issued by invoking the extended period of limitation. The reply to the show cause notice was submitted by the respondent with details of income along with the audited balance sheets. On scrutiny of reply and the documents, the appellant observed that the respondent had earned taxable income under various heads which were not shown in their ST-3 Returns. It was also observed that the services provided by the respondent 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 Company were in agreement with M/s.Maruti Suzuki India Limited (here-in-after referred to as MUL) for sharing the expenses involved in organizing various events to advertise their products by way of reimbursement of certain part of said expenses that the respondent was providing business auxiliary services to MUL. The appellant observed that the service is taxable but the liability has not been discharged by the respondent and confirmed the demand of Rs.6,64,07,784/-. Challenging the same an appeal was filed before the Tribunal which has been allowed. Hence the present appeal has been filed.

6. Learned counsel for the appellant submitted that earlier similar inquiry was conducted by the department in regard to the period 2002-03 to 2006-07 which had culminated into issuance of Service Tax demand for an amount of Rs.3,30,81,610/- with an equal amount of penalty vide show cause notice dated 16.10.2008, that too, by invoking the extended period of limitation. The entire demand was confirmed by means of the order dated 30% of October, 2009 by the adjudicating authority. However on challenge being made to the said order, the Tribunal vide its final order No.70112/2015 dated 17.12.2015 had set aside the entire *demand. The said order was challenged by the appellant before this court in Central Excise Appeal No.7 of 2016 (Commissioner, Central Excise and Service Tax, Lucknow Versus Anand Motor Agency, Lucknow). This court by means of the order dated 13.04.2017 disposed of the appeal and remanded the matter to the Tribunal on the ground that issue involved in the appeal was not discussed, which is still pending consideration before the Tribunal, as such the order dated 17.12.2015 has not attained finality. Therefore, the same could not have been relied by the Tribunal and the Adjudicating Authority also could not have followed it.*

7. However, he submitted that the learned Tribunal, without deciding the said issue in the pending appeal after remand, has set aside the demand in question merely on the ground that the issues involved in the appeal have already been decided by the final order dated 17.12.2015 and it has attained finality as it has not been challenged but it has not been followed by the adjudicating authority, whereas the same is pending consideration. Therefore the order passed by the Tribunal in Appeal is not sustainable and liable to be set aside.

8 Per contra, learned counsel for the respondent, though, vehemently opposed the submissions of learned counsel for the appellant, but could not dispute the fact that the order dated 17.12.2015 has not attained finality and the same is pending before the Tribunal after remand by this Court, which involves similar issue.

9. Having heard learned counsel for the parties and after going through the material placed on record of the appeal, we find that the show cause notice dated 20.11.2017 was issued for the period 2012-13 to 2016-17 raising similar demands of service tax which were made for the period 2002-03 to 2006-07 in regard to which the demand was raised by means of the show cause notice dated 16.10.2008. The same was confirmed by the adjudicating authority vide its order dated 30th of October 2009, which was challenged in appeal before the Tribunal. The Tribunal vide its order dated 17.12.2015 had set aside the entire demand. The order dated 17.12.2015 was challenged before this court in Central Excise Appeal No.7 of 2016, in which two substantial questions of law were framed, which are as follows:-

"(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?"

10. The first question was not pressed by the appellant as the same was already subject matter of question No.2. With regard to question No.2 after considering the statement of the appellant under the order in appeal this court found that there was no discussion on the aspect of issue involved in the appeal and the same was not dealt with. Hence the matter was remanded to consider the aspects involved in appeal and findings of Commissioner of Central Excise. It is not disputed by the parties that after remand the matter is still pending before the Tribunal for adjudication. However, the Tribunal by observing in paragraph 8 of the impugned order that the entire demand of show cause notice dated 16.10.2008 on several issues (seems to have wrongly been mentioned as 16.10.2018) stands set aside by the order No.70112/2015 of the Tribunal dated 17.12.2015 and apparently no appeal has been filed by the department against the said order, therefore the said decision attained finality. Thereafter the Tribunal considering that once the similar demand was set aside by the Tribunal the same should have been followed by the adjudicating authority, has set aside the demand.

11. The Tribunal has set aside the demand holding that the adjudicating authorities have absolutely ignored the principles of judicial discipline by not following the binding order passed by the Tribunal, whereas the Tribunal is also required to follow the judicial discipline while deciding the issue involved in appeal, which was pending consideration before the Tribunal in another appeal after remand by this court. Once the same issue involved in the appeal is pending consideration before the Tribunal after remand by this court it is incumbent upon the Tribunal to decide the issue afresh in accordance with law and unless the Tribunal decides the issue it cannot be said that the said order dated 17.12.2015 has attained finality and adjudicating authority should follow the judgment and order passed by the Tribunal, which is still pending for fresh consideration. Therefore the Tribunal ought to have decided both the appeals, involving several common issues, together. Thus the substantial question of law involved in this appeal is answered accordingly.

12. In view of above, we are of the considered opinion that the impugned judgment and order dated 04.02.2022 is not sustainable and the appeal is liable to be allowed.

Accordingly, the appeal is allowed. The impugned judgment and order dated 04.02.2022, passed in Final Order No.ST/A/70065-70066/20220CU (DB) passed in Service Tax Appeal No.70567 of 2019: M/S Anand Motor Agencies Ltd. versus Commissioner of Customs, Lucknow is set aside only to the extent of passing of the order in the said appeal. However, it will have no effect on the order passed on Service Tax Appeal No.70005 of 2019.

13. The Tribunal is directed to decide Service Tax Appeal No.70567 of 2019 afresh after clubbing the appeal with the earlier appeal pending after remand by means of judgment and order dated 13.04.2017 passed in Central Excise Appeal No.7 of 2016 by this Court. The appeals shall be decided after hearing both the parties in accordance with law within a period of two months from the date of production of a certified copy of this order. It is further provided that no adjournment shall be granted to the parties. Adjournment, if any, in exceptional circumstances, shall be granted with the leave of the court only.

2.3 Thus this appeal is being heard as remanded by the Hon'ble High Court.

3.1 Have heard Shri Vineet Kumar Singh, learned Advocate appearing on behalf of the Appellant and Shri Manish Raj, Learned Authorized Representative appearing on behalf of the Revenue.

3.2 Arguing for the Appellant learned counsel submits that

- Service Tax liability on the following issues is in dispute:-
    - Service Tax on Insurance Commission
    - Service Tax on Finance Payouts
    - Service Tax on Incentive received from MUL
    - Service Tax on Handling & Logistic Charges
    - Service Tax amounting to Rs.2,87,02,194/- on Repairing, reconditioning, restoration service
    - Service Tax on Reimbursement of Expenses from MUL
    - Service Tax under Reverse Charge Mechanism on entire expenses appearing in the audited Profit & Loss Account.
- In respect of the service tax on finance payouts the service tax is being paid on the regular basis. Fact that

has been noted in the impugned order liability is being accepted and is being pay out basis and in respect of required maintenance. Para 19(C) & Para 20 of the Order-In-Original is reproduced below:-

> *"19.c. Liability of Service tax under "Business Auxiliary Service" under the head of Incentives received from Financers: The Noticee has accepted the liability of service tax under "Business Auxiliary Service" under the head of Incentives received from Financers. The Noticee has further submitted that they have deposited the same and also requested to appropriate the same. The Noticee has not disputed the levy of service tax on "Business Auxiliary Service" under the head of "Incentives received from Financers", therefore, there is no dispute regarding the taxability of amount under such head. I find that the Noticee has not submitted any documentary evidence for payment of service tax in this regard, as claimed by them.*
>
> *Therefore, they are liable to pay Service tax under "Business Auxiliary Service" under the head of "Incentives received from Financers", alongwith interest under Section 75 of the Finance Act, 1994, as proposed in the impugned show cause notice."*
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> *20. Regarding the issue of liability of Service tax on consideration received from "Sale of Services" against the subheading 'Job receipts' (Net), the Noticee has submitted that there is no short payment of Service tax with the income of Job work as provided in the audited Profit & Loss Account during the period of dispute and the department has raised the demand without reconciling the Periodical ST-3 return with the audited Profit & Loss Account for the corresponding year. The Noticee has not disputed the levy of service tax the amount of "Sale of Services" against the subheading Job receipts (Net), therefore, there is no dispute regarding the taxability of amount under such head. I find that the Noticee has not submitted any documentary evidence for payment service tax in this regard, as claimed by them.*
>
> *Therefore, they are liable to pay Service tax under the head of "Sale of Services", alongwith interest under Section 75 of the Finance Act, 1994, as proposed in the impugned show cause notice.*

- These liabilities are admitted and accepted and also paid.
- With regards to the other issues neither the matter in the first case was remanded by the Hon'ble High Court

as has been noted by the Tribunal in it's earlier order dated 09.12.2024.

- Findings recorded in the earlier order were not being challenged before the Hon'ble High Court or elsewhere and hence becomes final.
- the Tribunal made an error in setting aside the demands which had been already accepted by the Appellant and paid needs to be rectified and appropriated.

3.3 Learned Departmental Representative appearing on behalf of the Respondent has reiterated the finding recorded in the impugned order.

4.1 We have considered the impugned order along with order of tribunal (Final Order No 70065-7066/2022 dated 04.02.2022) and the order of Hon'ble High Court remanding the matter for reconsideration in light of the observations made.

4.2 In the Final Order no 70832/2024 dated 09.12.2024 (ST/200/2010) we have considered the Hon'ble High Court in remanding the matter, and the present appeal have to be considered in terms of the order passed in that appeal. The relevant para of the order dated 09.12.2024 is reproduced below:

> *"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 5 Service Tax Appeal No.200 of 2010 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."*

Thus we find note that matter has been remanded by the Hon'ble High Court for consideration of the demands which have been admitted by the appellant, and still the tribunal has proceeded to set aside the same vide Final Order No 70065-7066/2022 dated 04.02.2022.

4.3 We note that in Para 19C & 20 reproduced above Commissioner has confirmed the demand by including the said amounts. Tribunal while setting aside the entire demand as confirmed by the Commissioner. However, Tribunal has in Para No.2 observed as follows:-

> ***2. Service tax on finance pay outs.***
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> *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.*
>
> ***6. Service tax on consumables used during the course of servicing of the vehicles.:***
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> *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.*

4.4 Since demands in this response have been admitted and paid by the Appellant the Tribunal should have in the first stage itself confirmed the demand and appropriated the said demand against the confirmed demand which has not been done in the earlier round which we do now in the remand proceeding as per the directions of the Hon'ble High Court.

4.5 Apart from this there is no other issue requiring adjudication as was observed by us in earlier order dated 09.12.2024 in Para 3.5 (Reproduced above). Earlier order of the Tribunal in these appeals i.e. 70065-70066 / 2022 is modified to the extent of these demands which have been admitted by the appellant and paid. The amount paid by the appellant against these admitted liabilities will be appropriated against the amounts confirmed.

4.6 As we find that amount due have been paid even prior to the issuance of Show Cause Notice, the penalties could not have been imposed in respect of these demands which are confirmed by us as per para 4.5. Thus we do not interfere with the earlier order, to the extent of setting aside the entire penalties as on all other demand we are in agreement with the earlier order of this Bench in these appeals setting aside the demand and penalties.

5.1 Appeal is disposed of accordingly.

(Dictated and pronounced in open court)

Sd/-

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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