**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,**
**REGIONAL BENCH : ALLAHABAD**

**ST/375/2012-CU[DB]**

(Arising out of Order-in-Appeal No.259-ST/APPL/KNP/2011 dated 28.11.2011 passed by Commissioner(Appeals), Customs, Central Excise & Service Tax, Kanpur.)

M/s. Sahney Brothers

…APPELLANT(S)

VERSUS

Commissioner of Central Excise & Service Tax, Kanpur

RESPONDENT (S)

APPEARANCE

Shri Dharmendra Srivastava (C.A.) for the Appellant (s)
Shri Mohd. Altaf (Asstt.Commr.) (A.R.) for the Revenue

**CORAM:**

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 04.12.2018

FINAL ORDER NO.72773/2018

**Per Mrs.Archana Wadhwa :**

After hearing both sides duly represented by Shri Dharmendra Srivastava, learned C.A. for the appellant and Shri Mohd. Altaf, learned Asstt.Commr. (A.R.) for the Revenue, we find that the appellant is a authorized dealer of the vehicles manufactured by M/s.TVS Motor Company Ltd. and runs an authorized service station. They are duly registered with the Service Tax department.

2. As a result of initiation of proceedings against them, differential demand of Rs.59,867/- stands confirmed against them along with imposition of penalty of Rs.1.00 Lakh under section 78 of the Finance

Act, 1994 on two grounds. The first ground is that the appellant has received commission from banking or various other financial institutions working from his premises, which have to be considered as providing of service under the category of 'business auxiliary services'. On this issue learned C.A. fairly agrees that as per various decisions of the Tribunal, the Service Tax is liable to be paid on the said commission received from the banking institutions. However, he submits that the issue during the relevant time was not free from doubt and was subject matter of various decisions of the Tribunal. It is only with the said decisions, with which the litigant was unaware of that the law became clear and in this scenario he prays for setting aside of penalty.

3. The second issue relates to payment of Service Tax on the commission/incentives received from the manufacturers. The same stands held by the lower authorities as providing of service falling under 'business auxiliary services'. He submits that again the Tribunal in various cases has held that such receipt of incentives or commission etc. has got no connection with providing of any service.

For both the above issues he places reliance on the Tribunal's decision in the case of M/s.My Car Pvt.Ltd. v. C.C.E., Kanpur vide Final Order No.52197/2015 dated 08.07.2015.

4. Learned A.R. Shri Mohd. Altaf appearing on behalf of the Revenue fairly agrees with the contention of the learned C.A..

5. In view of the above and the law declared in the case of M/s.My Car Pvt.Ltd. (supra), we hold that the commission received from banking institutions is liable to tax, whereas commission/incentives

received from the manufacturers are not. We further agree with the learned C.A. that this is not a case of imposition of penalties. Accordingly while setting aside the pepenalties *in toto* we remand the matter to original adjudicating authority to re-quatify the demand on the commission received from the banking institutions, which the assessee would pay along with interest.

6. Appeal is disposed of in above terms.

(Dictated and pronounced in the open Court.)

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| SD/ | SD/ |
| **(ANIL G. SHAKKARWAR)** | **(ARCHANA WADHWA)** |
| **MEMBER(TECHNICAL)** | **MEMBER (JUDICIAL)** |

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