

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I**

APPEAL No.ST/70350/2017-CU[DB]

(Arising out of Order-in-Original No.15-16/Commissioner/ST/Noida/2016-17 dated 17/02/2017 passed by Commissioner, Service Tax, Noida)

M/s Vipul Motors Pvt. Ltd.

...Appellant

Vs.

Commissioner, Service Tax, Nodia

...Respondent

Appearance:

Request for Adjournment

for Appellant

Shri Mohd. Altaf, Assistant Commissioner (AR),

for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 07/12/2018
Date of Pronouncement : 11/12/2018

FINAL ORDER NO. **72871 / 2018**

Per: Archana Wadhwa

After rejecting the request for adjournment, we proceed to decide the appeal itself and have accordingly heard learned AR appearing for the Revenue and have gone through the impugned order.

2. As per facts on record, the appellant is engaged in providing taxable services of 'Authorized Service Station' and was duly registered with the Service Tax Department. The dispute in the present appeal relates as

to whether the spare parts used by the appellants during the course of servicing the vehicles are required to form part of the assessable part of the services or not. Further, the appellant is also receiving commission from various manufacturers as their sales incentives. The issue is as to whether such commission would be taxable in the hands of the appellants or not. Further, the service tax is liable to be paid on the amount of labour income or not is also one of the issues.

3. We note that the Tribunal decision in the case of M/s My Car Pvt. Ltd. V/s Commissioner of Central Excise, Kanpur dated 08.07.2015 have declared the law on all the above issues. The applicability of the same is required to be examined in the light of the precedent case for which purpose, we deem it fit to set aside the impugned order and remand the matter to Original Adjudicating Authority. The Hon'ble Allahabad High Court decision in the case of Commissioner of Customs & Central Excise V/s J.P. Transformers reported at 2014 (36) S.T.R. 961 (All.) laying down that the cost of goods, on which VAT has been paid which stands utilized for repair activities would not form part of the services would also be taken into consideration by the Adjudicating Authority.

4. In view of the forgoing, we set aside the impugned order and remand the matter to Commissioner for fresh adjudication in the light of the observation made as above.

(Pronounced in Court on 11.12.2018)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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