

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL**

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No.ST/51800/2015-ST[DB]

(Arising out of Order-in-Original No.(185/2013) 04 of 2015 dated 02/02/2015 passed by Commissioner, Central Excise & Service Tax, Allahabad)

M/s Raj India Auto Pvt. Ltd.

...Appellants

Vs.

Commissioner, Customs, Central Excise & Service Tax, Allahabad

...Respondents

Appearance:

Shri Dharmendra Srivastava. (C.A)

for Appellant

Shri Sandeep Kumar Singh, Deputy Commissioner (AR),

for Respondent

CORAM:

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

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

Date of Hearing/ Decision : 10/12/2018

FINAL ORDER NO.72873 / 2018

Per: Archana Wadhwa

The challenge in the present appeal is only to imposition of penalty of Rs.51,02,297/- imposed in terms of Section 78 of the Finance Act, 1994 as also the penalties under Section 77(1)(a) & 77(2) of the said Act.

2. Learned Advocate appearing for the appellant submits that the appellant was engaged in providing taxable services under the category of 'Authorized Service Station' and were discharging their service tax liability. However, a dispute was raised as to whether the warranty charges or commission earned from the Banks or other Financial Institutions as also from Insurance Companies would form the assessable value

of their service or not. The proceedings were initiated against them resulting in confirmation of demand and imposition of penalty. Learned Advocate fairly agrees that the said issue now stands decided against them in the case of M/s My Car Pvt. Ltd. vide Final Order No.52197/2015 dated 08.07.2015. He also clarifies that the tax confirmed against them stands deposited by them along with deposit of interest.

3. As such, only prayer is to set aside the penalties. He is relying upon the Tribunal decision in the case of M/s JMK Motors and Motels (P) Ltd. vide Final Order No.71844-71846/2017 dated 30.11.2017, where penalties were set aside by observing that the disputed issue was the subject matter of various litigations before various Forums and as such was not free from duty, thus not justifying imposition of any penalty upon the appellants.

By following the said decision of the Tribunal while confirming the demand of service tax, we set aside the penalties imposed upon the appellant. The appeal is allowed to above extent.

(Pronounced & Dictated in Court)

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

Sd/-
(Archana Wadhwa)
Member (Judicial)