

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

APPEAL Nos.ST/50222,50264/2014-CU[DB]

(Arising out of Order-in-Appeal No.MRT-EXCUS-002-APPL-108-109/13-14 dated 03/09/2013 passed by Commissioner (Appeals), Customs & Central Excise, Meerut-II)

Commissioner, Central Excise, Meerut-II
(In Appeal No.ST/50222/2014-CU[DB])

M/s Akansha Automobiles P. Ltd.
(In Appeal No.ST/50264/2014-CU[DB])

...Appellants

Vs.

M/s Akansha Automobiles P. Ltd.

...Respondent

Commissioner, Central Excise, Meerut-II

Appearance:

Shri Mohd. Altaf, Assistant Commissioner (AR)
Shri Sharad Chandra Tewari (Adv.),

for Revenue
for Assessee

CORAM:

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

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

Date of Hearing/ Decision : 05/12/2018

FINAL ORDER NOs **72887-72888 / 2018**

Per: Anil G. Shakkarwar,

Above stated two appeals are arising out of same impugned Order-In-Appeal No.MRT-EXCUS-002-APPL-108-109/13-14 dated 03/09/2013 passed by Commissioner (Appeals), Customs & Central Excise, Meerut-II. Therefore, they are taken together for decision.

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2. After hearing both the sides duly represented by learned AR Shri Mohammad Altaf for the Revenue and Shri Sharad Chandra Tewari learned counsel for the respondent, we note that Revenue has raised issues related to sharing of expenses for advertisement and income related to optional registration of new vehicle. We note that both Original Authority and learned Commissioner (Appeals) have allowed the benefit of reimbursement of expenses to the service provider and relied upon the decision of Hon'ble High Court of Delhi in the case of Intercontinental Consultants and Technocrats Pvt. Ltd. V/s Union of India reported as 2013 (29) S.T.R. 9 (Delhi). We note that Revenue has contested the said order on the ground that Revenue has preferred an appeal before Hon'ble Supreme Court and we note that as submitted by learned AR the Hon'ble Supreme Court has found the said ruling by Hon'ble High Court of Delhi as sustainable. We, therefore, do not find any merit in the ground of appeal raised by Revenue. The other issues raised by Revenue are related to incentives received by M/s Akansha Automobiles Pvt. Ltd. on account of sales of Cars, Spares and Accessories. We note that there is no service involved in the same since Cars, Accessories and

Spares are purchased by M/s Akansha Automobiles from the manufacturer and sold to the customers. We, therefore, do not find any merit in the appeal filed by Revenue and the same is rejected.

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3. After hearing both the sides duly represented by Shri Sharad Chandra Tewari (Adv.) for the appellants and learned AR Mohammad Altaf, appearing for the Revenue, we note that learned Commissioner (Appeals) in his impugned order at sub-para D at page 8 of his order has observed as follows:-

“(D) Unexplained Income/value of Rs.95,93,297/-: *With regard to confirmation of demand of service tax of Rs.10,83,072/- on income/value of Rs.95,93,297/-, the adjudicating authority in the impugned order has held that as per the show cause notice, the party was alleged to have not paid service tax on gross value of Rs.2,70,98,539/- whereas as per their defence reply, they were able to give explanation only for a amount of Rs.1,75,05,242/- and thus, despite sufficient time having been given to them, they have still not explained the source/ manner of balance income of Rs.95,93,297/-. In this context, although the party has relied on and produced certain documents viz. CA’s certificate & copies of their ledger accounts, but these documents do not appear to be relevant in this subject matter. The party, thus could not give any plausible explanation or any concrete evidence with regard to why the said demand of service tax on income/value of Rs.95,93,297/- should not be raised/confirmed. Therefore, the impugned*

demand of service tax of Rs.10,83,072/- (including ed. cess & sec. higher ed. cess) & interest thereon stands confirmed.”

We note that the appellant is disputing said confirmation of Service Tax of Rs.10,83,072/-. The learned counsel has submitted that they have submitted the Chartered Accountant's certificate and copies of their ledger accounts to explain their income of Rs.95,93,297/- and submitted before us that the said income was in respect of their other service station at Rampur and the same has undergone assessment for payment of service tax. Now this aspect needs to be verified. We, therefore, remand the matter to Original Authority to verify the claim of the appellant that the said consideration stand subjected to appropriate service tax. The appellant are free to submit their submissions to establish their case. In above terms after setting aside the impugned order in respect of service tax of Rs.10,83,072/-, we remand the matter to Original Adjudicating Authority for fresh decision.

(Pronounced & Dictated in Court)

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

Sd/-
(Archana Wadhwa)
Member (Judicial)