

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

ST/70364/2017-ST[SM]

(Arising out of Order-in-Appeal No.69/ST/APPL/KNP/2017 dated 20.02.2017 passed by Commissioner(Appeals), Customs, Central Excise & Service Tax, Kanpur.)

M/s. Spark Automotive

...APPELLANT(S)

VERSUS

Commissioner of Central Excise & Service Tax, Kanpur

RESPONDENT (S)

APPEARANCE

Shri Dharmendra Srivastava (C.A.) for the Appellant (s)
Shri Gyanendra Kumar Tripathi (A.C.) (A.R.) for the Revenue

CORAM:

SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 19.12.2018

FINAL ORDER NO.72909/2018

Per ANIL G. SHAKKARWAR :

After hearing both sides duly represented by Shri Dharmendra Srivastava, learned C.A. for the appellant and Shri Gyanendra Kumar Tripathi, learned Asstt.Commissioner (A.R.) for the Revenue I find that the appellant is authorized dealer of the vehicles manufactured by M/s.Tata Motors Ltd..

2. As a result of initiation of proceedings against the appellant a demand of Rs.25,592/- stands confirmed against them along with imposition of penalty of around Rs.11,000/- under section 78 of Finance Act, 1994 on two grounds. The first ground is that the appellant has

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

3. The second ground relates to demand of Service Tax on 'GTA services'. The learned C.A. argues that the expenses which were reimbursed on actual expenditure on account of purchase of diesel and petrol by the employees spent for performing business activity was recorded in the books of accounts towards travelling expenses and the same was considered by Revenue as 'GTA service'. He fairly agreed that since the demand is on lower side they do not wish to contest, but he argues that the penalty imposed on the same is not justified.

4. Learned Departmental Representative has supported the impugned order.

5. After having considered the submissions from both the sides I note that penalty imposed in the present case is not justified. Therefore I set aside the penalty of around Rs.11,000/- imposed under section 78 of Finance Act, 1994. I further reduce penalty to Rs.2,000/-(Rupees Two Thousand only) under section 77 of Finance Act, 1994. The

impugned order is modified to that extent. The appeal is partially allowed.

(Dictated and pronounced in the open Court.)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

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