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REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

To

Dated: 05/12/2017

Appellant as per address in table below
Respondent as per address in table below

Final Order No. ST/A/71867-71868/2017-CU[DB] dated 27/06/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/646/2009	**Ashoka Auto Sales Ltd** Agra Kanpur Road Nunhai AGRA UP
2	ST/52262/2014	**Ashoka Auto Sales Ltd** Nunhai, AGRA UP
		Name and Address of Respondent
3		C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005
4		C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

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6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise, I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Second Folder Copy 19 Guard File

Asstt. Registrar

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

APPEAL Nos.ST/646/2009-CU[DB] & ST/52262/2014-CU[DB]

(Arising out of Order-in-Original No. KNP-EXCUS-000-COM-027-13-14 dated 21/01/2014 (In Appeal No. ST/52262/2014-CU[DB]) and Order-in-Original No. 2/Commissioner/MP/2009 dated 05/05/2009 (in Appeal No. ST/646/2006-CU[DB]) both passed by Commissioner of Central Excise & Service Tax, Kanpur)

M/s Ashoka Auto Sales Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Kanpur **Respondent**

Appearance:

Shri B.L. Narasimhan (Advocate) &
Shri Atul Gupta (Advocate) for Appellant
Shri Pawan Kumar Singh (Supdt.) AR, for Respondent

CORAM:

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

Date of Hearing : 27/06/2017
Date of Decision : 27/06/2017

FINAL ORDER NO. 71867-71868/2017

Per: Anil Choudhary

The issue in these appeals by the assessee is whether Service Tax under the category of Business Auxiliary Services have been rightly demanded on sales and other incentives received from Tata Motors, Commission received from banks/financiers, levy of Service Tax on hire purchase Commission/other charges, Job-work charges and demand of Service Tax on Freight earned from Tata Motors Limited.

2. The appellant Ashoka Auto Sales Ltd. at Agra is registered for payment of Service Tax under various categories of service including BAS. It appeared to Revenue that the appellant is receiving commission for arranging loans for the customers and also sales and other incentives from Tata Motors for promoting or marketing the goods but are not paying any Service Tax on the said Business Auxiliary Services. Accordingly, show cause notice dated 3rd October, 2008 was issued for the period 1 July, 2003 to 31 March, 2007 by invoking extended, period demanding Service Tax on sales and other incentives received from Tata Motors, commission received from banks/financiers and hire purchase commission and other charges received from TATA Motors under the category of BAS. Similarly, show cause notice dated 22 October, 2012 was also issued invoking the extended period for the period 2007-08, 2008-09, 2009-10 and 2010-11 wherein in addition to the demand of Service Tax on sales and other incentives, commission received from banks and financial institutions, et., Service Tax was also demanded in respect of Job-work and Freight from customers as reflected in the final accounts of the appellant. The show cause notices were adjudicated on contest and the proposed demands were confirmed and further amount already deposited was appropriated and penalty was imposed under Section 75(A), Section 76, Section 77 and Section 78 of the Act. Being aggrieved by the adjudication orders passed by the

learned Commissioner, the appellant is before this Tribunal.

3. The learned Counsel for the appellant urges that so far as the sales and other incentives received as a dealer of TATA Motors Limited is concerned, there is no element of service involved in the said transaction. The manufacturer, Tata Motors during the beginning of the financial period issues their incentives or discount policy or scheme on the number of vehicles purchased and/or sold by the appellant and other dealers and such incentives earned is in the nature of trade discounts wholly attributable to the trading activity and as such, demand for this activity is not taxable under the Service Tax provisions.

4. The second issue is regarding commission received from banks and financial institutions. The learned Counsel explains that they have not provided any service to the said banks/financial institutions. They have only provided permission or undefined table space in their premises to the banks and financial institutions so as to facilitate the availability of loan facility to the buyers of the vehicles. Since only such facility is provided, there is no element of Business Auxiliary Service as neither they are marketing any services of client nor they are personally involved in assisting the banks/financial institutions. The banks and/or financial institutions gave some incentive or commission to the appellant on the business generated by their own efforts,

which is by using the premises of the appellant. At best, it may be in the nature of Business Support Service but the same cannot be Business Auxiliary Service.

5. So far the issue of receipts under hire purchase commission/other charges is concerned, it is explained that the staff of the appellant assist their customers in documentation, insurance and registration of the vehicles and sometimes in filling the forms, for hire purchase. The learned Counsel states that so far the documentation charges are concerned, these are received from the buyers of the vehicles. When a customer approaches the appellant for purchase of vehicles certain formalities have to be complied with, including insurance of the vehicle, registration of the vehicle, etc., which are pre-requisites under the Motor Vehicle Act which provides that no vehicle will be issued a Gate Pass from the premises of the appellant until and unless such formalities relating to insurance and registration are complied with. The appellant helps the customers in completion of the documents and in getting the vehicle registered and completing the formalities. This amount received from the buyers of the vehicle, is not for promoting anybody's business. In lieu of such services, certain charges are collected directly from the customers or buyers of the vehicles. Further, these services are not provided on behalf of any third person.

6. So far as the re-possession charges are concerned, when the vehicles are sold by the banks or financial institutions on financing, in case of default by a customer in repayment loans or installments, the vehicles are repossessed by the concerned financier, who keeps the vehicles in the appellant's yard for convenience and nothing is charged by the appellant from the said financier on this account. Repossession charges are directly collected from the customers/vehicle owners for using the space of the appellant, which are in the nature of parking charges for the period the vehicles is lying in the appellant's premises and not for any service provided to the banks/financiers. Thus, there is no element of service provided to any banks and/or financial institutions and neither the repossession charges nor the documentation charges are received from any banks and/or financial institutions and as such, the same are not chargeable to Service Tax under BAS.

7. In the appeal No. ST/5226/2014, there are two additional grounds relating to levy of service or job work and freight from customers. So far the job work is concerned, the allegation of the Revenue is that from the scrutiny of the profit and loss accounts for the period 2007-08 to 2010-11, it was found that the appellant had received income from the Job work during the period and it was also observed that they had received income from the freight under the two heads-

'freight received' and 'Freight received on transport vehicle (logistics)'. On being asked by the Audit Officers regarding supporting documents and/or clarification against these income received from Job work and Freight received, Freight received on transport vehicle – logistics, the appellant did not provide these documents to the Audit Officers on the spot nor at a later stage during investigation. Accordingly, it appeared that Freight received is in the nature of receipt as a Goods Transport Agency as defined under Section 65(50b) of the Act.

8. Further, it appeared that the job charges as found from the profit and loss accounts was also taxable under BAS, as BAS provides for any service in relation to promoting, marketing or sale the goods for or on behalf of the client and thus, nature of job work under taken by the party was also covered. Learned Counsel explained that so far job work charges are concerned, the same service charges received by the appellant for provision of services as an Authorized Service Station and it was further explained that the said job charges are in respect of servicing of commercial vehicles which is not taxable under the category of Authorized Service Station. So far providing of service non-commercial vehicles are concerned on such job charges, the appellant have already admittedly deposited the tax.

9. So far the Freight earned is concerned, it is explained that the appellant is not covered under GTA as defined under

Section 65(50b) of the Act, which defines GTA as – "Goods Transport Agency means any person who provides service in relation to transport of goods by road and issues consignment notes, by whatever name called". Learned Counsel further states that admittedly the appellant have not issued any consignment note and as such no Service Tax can be demanded from them as a GTA. What the appellant has done is that they have transported the vehicles in their own trucks from the factory or depot of Tata Motors mainly to their own premises for trading. For this work, the amount of freight, Tata Motors normally incurs have been paid to the appellant. But, in absence of any consignment note being issued by the appellant, the said work/service is not taxable under the classification of GTA.

10. Learned Counsel further urges that it is evident from the face of the show cause notice that all the transactions on which Service Tax have been demanded, have been duly recorded in the books of accounts ordinarily maintained by the appellant and there is no element of any concealment or suppression on the part of the appellant. In this view of the matter, the invocation for extended period is untenable. Further, the second show cause notice is also in the teeth of the ruling of Hon'ble Supreme Court in the case of Nizam Sugar Factory v/s CCE, A.P. 2006 (197) ELT 465 (SC).

11. The leaned AR for the Revenue has relied on the impugned order.

12. Having considered the rival contentions, we find that so far the sales and other incentives are concerned the same are in the nature of trading receipts received by way of trade discounts and as such not tenable. So far as the commission received from banks and financial institutions are concerned, the relationship between the appellant and the banks and/or financial institutions is on 'Principle to Principle basis'. Both are promoting each other business. The appellant is interested in sale of the vehicle whereas the financial institutions or banks are interested in disbursement of loan for earning interest. Therefore, no particular activity done by the appellant is identified vide has the element of promoting the business of such banks and institutions save and except permission to use their premises or table space.

13. We hold that incentive or discount or commission received from the banks and institutions does not lead to the conclusion that the appellant provided service to them. At the most, it may be in the nature of business support service which is not the case made out in the SCN. Accordingly, we hold that Service Tax is not payable on commission bank/financial institution.

14. So far the hire purchase commission is concerned, we hold that the such charges are being received from the buyers of vehicles for assisting in registration insurance etc. of the vehicles which is an essential requirement under the Motor Vehicle Act and the said receipts are not chargeable to Service Tax.

15. Similarly, the repossession charges received by the appellant credited under 'other charges' in the profit & loss accounts are not tenable as they are received by the owners of the vehicle, whose vehicles are repossessed by the financiers and for safekeeping are entrusted to the appellant. For such service or parking, the appellant received an amount from the vehicle owners which we hold is not taxable under BAS. Further, these receipts are on principle to principle basis and on that score also are not liable to Service Tax.

16. So far as the job work charges are concerned, we find that the learned Commissioner has himself held that the same is not taxable under BAS but under Authorized Service Station charge, which was not the case made out in SCN and as such the demand of service tax on these charges is not tenable. Further, we hold that the receipts for service of commercial vehicle is not taxable under the category of 'Authorized Service Station'. So far the Freight received from customers/Tata Motors is concerned, we hold that essential element of GTA that issuance of consignment notes was not

done by the appellant and thus, the same cannot be liable to Service Tax as a GTA. Accordingly, no Service Tax is payable on this score also.

17. Thus, we allow these appeals on merits and set aside the impugned orders. As we have decided the appeal on merit, we leave the ground of limitation open. The appellant shall be entitled for the consequential benefits in accordance with law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Ankit

प्रमाणित प्रति/Certified True Copy
05/01/18
सहायक पंजीकार/Asstt. Registrar
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