CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/582/2008-DB, ST/583/2008-DB

[Arising out of Order-in-Appeal No. 156/2008 dated 28/08/2008 passed by the Commissioner of Central Excise and Service Tax (Appeals), Cochin.]

M/s. M.G.F.MOTORS LTD
MGF HOUSE, MATSYAPURI WILLINGTON ISLAND, COCHIN – 682 019.

Appellant(s)

Versus

Commissioner of Central Excise,
Customs and Service Tax
COCHIN-CCE
C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN, - 682018
KERALA

Respondent(s)

Appearance:

Mr. Kuriyan Thomas, Advocate
Menon & Pai, Advocates,
Ernakulam, I.S. Press Road
Kochi – 682 018.

For the Appellant

Mrs. Kavitha Podwal, AR

For the Respondent

Date of Hearing: 20/04/2018
Date of Decision: 20/04/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. DEVENDER SINGH, TECHNICAL MEMBER

Final Order No. 20665-20666 / 2018

Per : DEVENDER SINGH

These two appeals have been filed against the Order-in-Appeal No.156/2008-ST dated 28.8.2008.

2. Brief facts of the case are that the appellants are authorized dealers for selling and servicing of motor cars manufactured by M/s. Hyundai Motors India Ltd. (M/s. HMIL). The manufacturer is providing three free service to the customers who purchase new motor cars from the authorized dealers. As per clause 4.4 of the agreement entered into between M/s. HMIL and the appellant, the latter is not permitted to charge customers for any services for which dealer is reimbursed by M/s. HMIL for repairs covered under the warranty and other free services. The dealer's profit offered by M/s. HMIL is inclusive of all the above payments. The period involved in these two appeals is from May 2003 to March 2004. The Revenue felt that the charges for these free services during the warranty period are reimbursed by the manufacturer. Accordingly, a show-cause notice was issued alleging that the reimbursement received by the authorized service stations from manufacturer for carrying out any free service of any motor vehicles are includable in the assessable value. The matter was adjudicated and the demand of Rs.5,64,548/- along with interest was confirmed and penalties under various Sections of Finance Act, 1994 were imposed. In the appeal proceedings, the learned Commissioner (A) upheld the order of the adjudicating authority. Aggrieved from which, the appellants have filed this appeal.

3. Learned advocate for the appellant contends that both the adjudicating authority and the first appellate authority had relied on the wrong clause of the agreement between the appellant and M/s. HMIL. He also stated that the issue of free warranty was covered in the clause 7.3(b) of the said agreement. He also contended that the issue of liability of service tax on free warranty provided by the authorized service station to car purchasers was covered by the judgment rendered by this Tribunal in the case of *CCE, Indore vs. Jabalpur Motors Ltd.: 2014 (36) STR 1160 (Tri.-Del.)* and *CCE, Nashik vs. Automotive Manufacturers Ltd.: 2016 (42) STR 448 (Tri.-Mumbai)*. He also submitted that the appellant has not received any consideration by way of reimbursement towards provision of free services, which are provided as part of their dealership agreement.

4. Learned AR for the Revenue reiterated the findings in the impugned order of the Commissioner (A).

5. Heard both the sides and perused the records.

6. We find that the show-cause notice has been issued on the basis of Clause 4.4 of the dealership agreement. As rightly pointed out by the learned advocate, the said clause does not pertain to free service done under warranty services. For the sake of convenience, the said clause is reproduced below:

“4.4 Disclosure as to prices of Hyundai Products

DEALER agrees to explain to customers of Hyundai Products the items, which make up the Maximum Selling Price fixed and intimated by HMI from time to time and give such customers itemized invoices and any other information required by law. DEARLER further agrees that it will not make any misleading statements or suppress material facts as to the items which make up the Maximum Selling Price of any Hyundai Products or as to the prices related to such items including destination or other charges paid to HMI. DEALER also agrees not to charge customers for any services for which DEALER is reimbursed by HMI without limitation, repairs covered under warranty and other free services.”

6.1 We also find that the free services are covered under clause 7.3(b) of the dealership agreement, which is reproduced below:

7.3 Reimbursement Rates

(b) DEALER shall provide policy free services for all Hyundai Products covered under such scope regardless of whether the Hyundai Products have been purchased from them or any other Hyundai dealer. In case the servicing dealer is different from the selling dealer the servicing dealer will service the Hyundai products, as per the policies & procedures laid down by HMI from time to time. DEALER shall adhere to the changes in respect of the policies & procedures as notified by HMI from time to time.

6.2 From the above, it is evident that the show-cause notice as well as the orders of both the lower authorities are based on Clause 4.4 of the dealership agreement, which is not related to free warranty. Free warranty is provided in terms of clause 7.3 of the agreement. The said clause does not provide for any reimbursement. Even from the language of clause 4.4, it does not flow that the repairs covered under warranty are reimbursable. Reference to reimbursement is in relation to any services for which dealer is reimbursed by HMT without limitation.

6.3 We also find that the issue of liability to service tax for free services provided to car purchasers by the authorised dealers is already settled in favour of the assessee by this Tribunal in the case of *Jabalpur Motors Ltd.* (supra) wherein this Tribunal held as below:

> 4. We have considered the facts of the case. Authorised Service station is defined as under :
>
> *" 'authorised service station' means any service station, or centre, authorised by any motor vehicle manufacturer, to carry out any service, repair, reconditioning or restoration of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer",*
>
> and the related taxable service is defined as "a service rendered to a customer, by an authorised service station, in relation to any service, repair, reconditioning or restoration of motor cars, light motor vehicles or two wheeled motor vehicles in any manner."
>
> 5. It is evident from the above definition that the liability to service tax is on account of the said service provided to a customer. The service is provided to the car buyers who are the customers. For the free services, no amount is charged from the customers. As regards the contention that amount towards the free services is reimbursed by Maruti Udyog Ltd., it is seen that Maruti Udyog Ltd. have categorically stated that they do not reimburse any amount towards such free services to the dealers. The

respondents have also stated that providing such free services is part of the functions and duties of dealers who are entitled to the dealership commission. Also the free services are rendered to the car buyers and not to M/s. MUL and the car buyers pay nothing therefor. Seen in this light it is evident that the demand of service tax as per column 5 of the table above is misconceived. Coming to the demand of service tax on the amount received on account of salary of drivers of vans used for providing mobile service to the car owners shown in column 4 of the table, it is evident that the customer in this case is the car owner who is the recipient of service. M/s. MUL receive no service nor are M/s. MUL, the respondents' customers. Thus the respondents have not provided the service of authorised service station to them (i.e. M/s. MUL). Accordingly this amount cannot be made liable to service tax under the category of authorised service station service.

6. In the light of the foregoing, we find that the appeal filed by the Revenue is not sustainable and is therefore dismissed."

6.4 The issue is also covered by the decision of this Tribunal in the case of *CCE, Nashik vs. Automotive Manufacturers Ltd. (supra); ASL Motors Pvt. Ltd. vs. CCE & ST, Patna: 2008 (9) STR 356 (Tri.-Kolkata)* and *Indus Motor Company vs. CCE, Cochin: 2009 (9) STR 18 (Tri.-Bang.)*.

6.5 We also find that in the case of ASL Motors Pvt. Ltd. (supra), this Tribunal took the following view in favour of the assessee:-

*"**4.** We find that the Ministry in its Circular No. 28/2006-Cus. (sic) (Circular No. 87/05/2006-S.T.), dated 6-11-06 has clarified that where service charges are reimbursed by the vehicle manufacturers, such reimbursement should be subjected to service tax. However, it is well-known that free servicing is normally provided by the dealers in the vehicle trade meeting the expenses from the dealers' margin, yet the Ministry has chosen to keep silent regarding taxability of such free servicing provided by the dealers for which no reimbursements are made by the vehicle manufacturers. It appears to us that such silence about the dominant practice of providing free servicing has resulted in some field officials taking unilateral action as in this case while majority of the dealers are not taxed on free servicing provided by them.*

***5.** We also find that in the constitutional scheme of things, there is mutual exclusivity between the taxability of sale of goods, which is* *charged to sales tax by the State; the excise duty on manufactured goods which is levied by the Centre; and the tax on services, which is also levied by the Centre. The impugned amount in question is a part of the dealers' margin which has been recovered by the appellants as a part of the sale value of the cars from the customers and the entire amount has been subjected to sales tax by the concerned State Government authorities. When the appellants sold the cars and recovered the amount including the dealers' margin, the dominant intent, was to sale the goods, namely, cars and not to provide free after sales service. In our view, the entire amount including the dealers' margin has been rightly taxed to sales tax representing the value of the cars. The provision of free servicing is merely incidental and intended to promote the sale of the cars. Hence, we are of the view that no service tax can be levied on the amount representing the dealers' margin or any part of it which already has been subjected to sales tax. Consequently, we set aside the impugned order and allow the appeal."*

6.6 By following the ratio of the above judgments, we hold that the order of the Commissioner (A) is not sustainable and the same is set aside.

7. In the result, the appeals filed by the appellants are allowed.

(Operative portion of the Order was pronounced
in Court on **20/04/2018.**)

S.S GARG
JUDICIAL MEMBER

DEVENDER SINGH
TECHNICAL MEMBER

rv...