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

Appeal(s) Involved:

ST/681/2008-DB

[Arising out of Order-in-Appeal No. 126/2008 dated 01/09/2008 passed by Commissioner of Central Excise (Appeals), Mangalore]

M/s. RNS MOTORS LTD
UNKAL HUBLI

Appellant(s)

Versus

C.C.,C.E.& S.T-BELGAUM
NO. 71...CLUB ROAD,
CENTRAL EXCISE BUILDING,
BELGAUM,
KARNATAKA
590001

Respondent(s)

Appearance:

Mr. Raghavendra, Advocate
G.SAMPATH & S. RAGHU
543,12TH CROSS,8TH MAIN J.P NAGARA
2ND PAHASE, BANGALORE 560078
BANGALORE
KARANATAKA
560078

For the Appellant

Mr. Madhup Sharan, AR

For the Respondent

Date of Hearing: 07/08/2018
Date of Decision:27/11/2018

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON'BLE SHRI P.ANJANI KUMAR, TECHNICAL MEMBER

Final Order No.21794/2018

Per : S.S GARG

The present appeal is directed against the impugned order dated 28.08.2008 passed by the Commissioner (Appeals) whereby the Commissioner (A) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellants registered under the category of 'Authorized Service Station' and paying Service Tax. On intelligence collected by the Department, it was found that the appellants were providing financial assistance to customers and receiving commission in connection with the promotion or marketing of service provided to the client or in connection with service provided to the client for providing financial assistance for purchase of vehicle from them through financial institutions. As the service provided by the appellant comes under the purview of "Business Auxiliary Services", SCN dated 12.05.2006 was issued demanding Service Tax for the period 2003-04 and 2004-05. The appellant paid the Service Tax of Rs.4,99,717/- along with interest on 28.07.2006. The adjudicating authority vide impugned order confirmed the Service Tax of Rs.4,99,717/- and interest of Rs.1,15,896/- and appropriated the same. Penalty of Rs.200/- per day under Section 68 of the Finance Act, 1994 and equivalent penalty under Section 78 of the Finance Act, 1994 is also imposed. Aggrieved by the Order-in-Original, the appellant filed appeal before the Commissioner (A) who rejected the same.

3. Heard both sides and perused the records of the case.

4. Learned Counsel for the appellants submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the definition of "Business Auxiliary Service". He further submitted that the impugned order is contrary to the binding judicial precedent. He also submitted that the appellant has only provided the space to M/s. Maruthi Udyog Ltd. for facilitating the car loans and insurance to prospective buyers and is receiving an amount from M/s. Maruthi Udyog Ltd. He further submitted that the activity of providing of space cannot be considered as service within the ambit of "Business Auxiliary Service" as the appellant has not provided any services of promoting the business of M/s. Maruthi Udyog Ltd. It is his further submission that the appellant right from the beginning contending that they are only providing space for finance and insurance company to set up their shops in their premises and not canvasing for availment of loan or for availing of insurance services. He also submitted that M/s. Maruthi Udyog Ltd. has already paid the Service Tax on the commission received from the customers who are availing finance and insurance facilities and part of the amount received by M/s. Maruthi Udyog Ltd. has been paid to the appellant and hence, the question of demanding Service Tax once again on the very same amount

from the appellant does not arise. For this submission, he relied upon the following decisions:

(i) Jaika Motors Ltd. Vs. CCE, Nagpur- 2014 935) STR 417 (Tri. Mum.).

(ii) Silicon Honda Vs. CCEx., Bangalore- 2007 (7) STR 475 (Tri. Bang.).

(iii) Pagariya Auto Center Vs. CCE, Aurangabad- 2014 (33) STR 506 (Tri. LB.).

(iv) Joshi Auto Zone Pvt. Ltd. Vs. CCE, Chandigarh- 2016 (42) STR 739 (Tri. Del.).

4.1 He also submitted that the Service Tax under 'BAS' was introduced w.e.f. 01.07.2003 and the tax on commission received was brought under the Service Tax net only w.e.f 10.09.2004 and hence, the demand of Service Tax for the period prior to 10.09.2004 is not sustainable in law at all. He also submitted that the demand is barred by limitation as the issue relates to interpretation of definition of 'BAS' service and there were conflicting views on the issue. In support of this submission, he relied upon the following decisions:

(i) Addis Marketing Vs. CCE, Mumbai- 2017 (50) STR 56 (Tri. Mum.).

(ii) VED Automotives Vs. CCE., Kanpur- 2016 (44) STR 140 (Tri. All.).

5. On the other hand, the learned AR defended the impugned order and submitted that the appellant is receiving the

amount as percentage of amounts of loan sanctioned to the appellant's customer and the same is accounted only as commission. He further submitted that the issue involved in the present case has been considered by this Tribunal in two decisions, namely, ***City Honda Vs. CCE, ST & Cus. Bangalore, 2018 (9) GSTL 412 (Tri. Bang.)*** and in the case of ***AVG Motors Ltd.,*** Final Order No. 21855-21857/2017 dated 01.09.2017. He further submitted that in both the cases wherein the facts were identical as that of the present case, the Division Bench of this Tribunal has confirmed the demand on the assessee under the category of 'BAS' and drop the penalty by invoking the provisions of Section 80 of the Finance Act on account of the fact that there were contradictory decisions on this issue during the relevant time.

6. After considering the submissions of both the parties and perusal of the material on record, we find that the appellant is a dealer of car manufactured by Maruthi Suzuki and is providing service of authorized service station. Further, we find that the M/s. Maruthi Udyog Ltd. are providing services of vehicle loans to the customers of the appellant which resulting in boosting the business of the company and recognition of the said assistance rendered by the appellant, the financial institution

reciprocated with commission in some percentage of loan distributed through the appellant and this activity is a clear case of promotion of services rendered by the appellant which is specifically included in the category of BAS specified under Finance Act, 1994 and are liable to Service Tax w.e.f. 01.07.2003. Such promotion of business of financial help promoted the business of the appellant also and does not alter the character of BAS. Further, We find that this Tribunal in the case of ***City Honda*** and ***M/s. AVG Motors Ltd***. cited supra have already considered this issue in detail and has come to the conclusion that the appellants are providing the services of "Business Auxiliary Service" and therefore, liable to pay Service Tax. The Division Bench of this Tribunal in the case of AVG Motors Ltd. cited supra has also considered the CBEC Circular No. 87/05//2006-ST dated 06.11.2006 wherein inter alia the following issue or question has been mentioned.

"(d) Whether the commission received by the automobile dealers from Banks/Non-Banking Financial Companies (NBFC), for introducing the customers seeing finances/loans to such banks/NBFCs is to be subjected to Service Tax? Further, in case parts of these incentives are passed on by the dealers to the customers, whether tax would be leviable only on that part of incentive, which is retained by the dealers or whether it would be on full amount?"

6.1 This question/issue has been answered in Para 4 of the Circular holding that Service Tax will be payable by the dealer on the gross amount received from the Financial Company. The answer given in Para 4 is given below:

"4. In some cases, the automobile dealers help the buyers of the vehicles for arranging the finances. For this, they have a tie-up with Banks/ Non-Banking Finance Companies. The customers are advised by the dealers to approach such financial companies for taking loans. The automobile dealers get commission from such financial companies for directing the customers to the latter. By this activity, the automobile dealers 'promote or market the services provided by their customer (i.e., the financial institution), and are therefore covered under 'taxable service', namely, the "Business Auxiliary Service". The tax is payable on the gross commission received by the automobile dealer. In some cases, the dealers share part of their commission with their customers to attract them. However, this is an independent transaction between the automobile dealer and the purchaser of the vehicle, and does not involve the service rendered by the automobile dealer to the finance company. Therefore, the tax payable by the dealer would be on the gross amount received from the financial company and not on the balance amount, i.e., after excluding the amount that he passes on to the customer."

6.2 The Tribunal in the case of ***TVS Motor Co. Ltd. Vs. CCE, Chennai, 2012 (28) STR 127 (Tri. Chennai)*** on the subject has observed as under:

"12. Facts and evidence aforesaid when tested on the touchstone of Section 65(105)(zzb) read with Section 65(19) of the Act that warrants taxation of the consideration received by the appellant from banks and insurance company as business auxiliary service provider and the service so provided becomes input service for banks to provide the output service of banking and financial service as well as insurance service by insurance company. Thus, the business auxiliary service provided by the appellant during the impugned period was liable to be taxed and that has rightly been done in adjudication without calling for interference in this appeal."

6.3 Considering above discussions and following the ratio of the Tribunal's decisions (supra), the liability of Service Tax against the appellants as sustained by the impugned Orders-in-Appeal is upheld. As far as the imposition of penalties under Section 68 and 78 of the Finance Act is concerned, we find that in both the decisions of this Tribunal cited supra, penalty was dropped by invoking the provisions of Section 80 of the Finance Act on account of the fact that there were contradictory decisions on this issue during the relevant time. Accordingly, we also drop all the penalties of the appellant. In view of the above said discussion, we uphold the demand of Service Tax on BAS and drop the penalty. Consequently, the appeal is partly allowed.

(Order was pronounced
in Open Court on **27/11/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S.GARG
JUDICIAL MEMBER

Parveen...