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

Appeal(s) Involved:

ST/96/2008-DB

[Arising out of OIA No. 63/2007 dated 30/10/2007 passed
by CCE,C&ST(Appeals), Cochin]

POPULAR VEHICLES AND SERVICES LIMITED
MAMANGALAM, KOCHI

Appellant(s)

Versus

C.C.,C.E.& S.T-COCHIN-CCE
C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN,
KERALA
682018

Respondent(s)

Appearance:

Shri Kuriyan Thomas, Advocate
MENON & PAI
P.B. NO.1911
IS PRESS ROAD,
COCHIN
KERALA
682018

For the Appellant

Dr. J. Harish, Jt. Commissioner(AR)

For the Respondent

Date of Hearing: 13/12/2018
Date of Decision:23/01/2019

CORAM:

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

Final Order No. 20092 / 2019

Per : S.S. GARG

The present appeal is directed against the impugned order dt. 30/10/2007 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellant is allegedly providing service in respect of sale of insurance products for and on behalf of M/s. Maruthi finance to the buyers of vehicles from M/s. Maruthi Udyog Ltd. In both the activities, the appellant was receiving remuneration / commission from M/s. Maruthi Insurance Brokers Ltd. (MIBL) / M/s. Maruthi Udyog Ltd. As the above activities of the appellant appeared to fall under 'Business Auxiliary Service' (BAS) as defined in Clause 19 of Section 65 of the Finance Act, 1994 and having found that no service tax had been paid, show-cause notices were issued to the appellant demanding service tax for the period 01/04/2005 to 31/09/2005 and 01/10/2005 to 31/03/2006 and also proposing penalties under the provisions of Finance Act, 1994. Show-cause notices were adjudicated vide Order-in-Original dt. 07/06/2006 and dt. 03/04/2007 confirming demand of tax along with interest and imposing penalties on the appellant under Sections 76, 77 and 78 of the Finance Act, 1994. Aggrieved by the Orders-in-Original, appellant filed appeals before the Commissioner(Appeals) who rejected the same. Hence the present appeal.

3. Heard both sides and perused records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without

appreciating the facts and the law. He further submitted that the appellant was not providing or promoting any service which was provided by MIBL and hence there is no justification in holding that the appellant is liable to pay service under the heading BAS. He further submitted that commission / remuneration received by them has already been suffered service tax at the hands of MIBL / MUL. He also submitted that service tax cannot be charged twice on the very same transaction as MUL have already paid service tax on the very same transaction in question under the category of Insurance Auxiliary Service. The learned counsel further submitted that the appellant receives a portion of the tax suffered commission from MIBL and Maruti Finance and the demands were confirmed treating the receipt of the appellant as relating to BAS provided to MIBL and Maruti Finance. The confirmation of demand by the original authority treating the receipt of the appellant was confirmed by the appellate Commissioner. He further submitted that the appeal was filed challenging the Order-in-Appeal No.63/2007 dt. 30/10/2007. The Order-in-Appeal is a common order covering Order-in-Appeal No.62 & 63 /2007 dt. 30/10/2007 and one of the order arising from the common OIA was subject matter of the decision reported as Popular Vehicles & Services Ltd. Vs. CCE [2010(18) STR 493 (Tri. Bang.)] and the decision was rendered in favour of the appellant. He further submitted that the order of the Tribunal was challenged by the Department before the Hon'ble High Court of Kerala and the said appeal was dismissed by the Hon'ble High Court vide judgment dt. 20/07/2018. He further submitted that in view of the inter-party judgment involving same issue, the appeal should be allowed.

5. On the other hand, the learned AR defended the impugned order and submitted that consistently on this issue, the Tribunal has rendered many decisions and has held that the services rendered by the assessee in such cases fall in the definition of BAS. The learned AR relied upon the following decisions:-

i. City Honda vs. CCE,ST&C, Bangalore [2018(9) GSTL 412 (Tri. Bang.)]
ii. Competent Automobiles Co. Ltd. Vs. CST [2017-TIOL-223-SC-ST]
iii. CST, Mumbai Vs. Jaybharat Automobiles Ltd. [2016(41) STR 311 (Tri. Mum.)]
iv. Pagariya Auto Center Vs. CCE, Aurangabad [2014(33) STR 506 (Tri. LB)]

6. Learned AR further submitted that the Hon'ble High Court of Kerala has not dismissed the appeal of the Revenue on merits but has only held that the High Court has no jurisdiction to decide such issues. He further submitted that after the decision of the Tribunal in the appellant's own case cited by the counsel for the appellant, there has been a series of decisions by the Tribunal wherein the Tribunal has held that the services rendered by the assessee fall in the definition of BAS and is liable to service tax.

7. One such decision is AVG Motors Ltd. + anr. [Final Order NO.21855-21857/2017 dt. 01/09/2017] wherein the Tribunal on an identical issue has confirmed the demand but dropped the penalties. The

Division Bench of this Tribunal in para 4, 4.1 to 4.4 has held as under:-

> *4. After having carefully considered the facts of the case and the submissions of both the sides, it appears that the matter is covered by the Tribunal's decisions in the cases of Ved Automotives vs. CCE, Kanpur: 2016 (44) S.T.R. 140 (Tri.-All.); CST, Mumbai vs. Jaybharat Automobiles Ltd.: 2016 (41) S.T.R. 311 (Tri.-Mum.); and TVS Motor Co. Ltd. vs. CCE, Chennai: 2012 (28) S.T.R. 127 (Tri.-Chennai).*
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> *4.1 We find that the appellants have been receiving commission/remuneration from M/s. Maruti Udyog Ltd. (MUL)/MIBL/MIANL for canvassing loans to buyers of vehicles and they are also engaged in issuing insurance policy of M/s. National Insurance Co. Ltd. on behalf of MIBL, which is a fully owned subsidiary of MUL. These facts are applicable to both the appellants. The appellants admit that they were receiving payments from MIBL for issuing insurance policies to customers and for collection of premium amount.*
>
> *4.2 The appellants contention is that MUL is paying service tax, and as such, the dealers are not liable to pay any further service tax on the Maruti Finance Dealer pay outs. However, from the facts on record as well as the statements recorded of the appellants, it is clear that the appellants are doing the service of promotion or marketing of service viz., issuance of insurance policies on behalf of MIBL. The fact that service tax was being paid by MUL to the insurance company along with the insurance premium will not make any difference, when the assessee-appellants are independently providing the service of promotion or marketing, which is covered by 'Business Auxiliary Service' as defined in Section 65(19) of Finance Act, 1994 read with Section 65(105)(zzb) of Finance Act, 1994; therefore, the assessee-appellants are liable to pay Service Tax on the services performed by them to M/s. MIBL, a fully owned subsidiary of MUL.*
>
> *4.2 In this regard, CBEC has also issued Circular No.87/05/2006-ST dated 6.11.2006 where inter alia the following issue/question has been mentioned.*
>
> > *"(d) Whether the commission received by the automobile dealers from Banks /Non Banking Financial Companies (NBFC), for introducing the customers seeking finances / loans to such banks / NBFCs is to be subjected to service tax? Further, in case part 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?"*

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."*

4.3 The Tribunal in the case of TVS Motor Co. Ltd. vs. CCE (supra) on the subject issue 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."*

> *4.4 Considering above discussions and following the ratio of the Tribunal's decision (supra), the liability of service tax against the appellants as sustained by the impugned Orders-in-Appeal is upheld.*

Further the Tribunal has dropped the penalty on the ground that the subject matter involved relates to interpretation issue. Similarly in the case of City Honda cite supra, the Division Bench of this Tribunal confirmed the demand of service tax but dropped the penalties. Therefore after following the ratios of the decisions relied upon by the learned AR, we confirm the demand of service tax but drop the penalty. The appeal is accordingly disposed of.

(Order was pronounced
in Open Court on **......................**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

Raja...