CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeals Involved:

Service Tax Appeal No. 20449 of 2014,

(Arising out of Order-in-Original No. COC-EXCUS-000-COM-083-13-14 dated 31/10/2013 passed by Commissioner of Central Excise and Service Tax, COCHIN.)

M/s. Popular Vehicles and Service Ltd.
Kuttukarn Centre, Mamangalam,
KOCHI - 682025
KERALA

Appellant(s)

Versus

Commissioner of Central Excise, Customs and Service Tax Cochin-CCE
C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN – 682 018.
KERALA

Respondent(s)

WITH

Service Tax Appeal No. 20450 of 2014

[Arising out of Order-in-Original No. COC-EXCUS-000-COM-084-13-14 dated 31/10/2013 passed by Commissioner of Central Excise and Service Tax, COCHIN.]

M/s. Popular Vehicles and Service Ltd.
Near St. Thomas Orthdox Church
Chavittuvary, S H Mount, PO
Kottayam –686 006
KERALA

Appellant(s)

Versus

Commissioner of Central Excise, Customs and Service Tax Cochin-CCE
C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN – 682 018.
KERALA

Respondent(s)

Service Tax Appeal No. 23209 of 2014

(Arising out of Order-in-Original No. EXCUS-000-COM-006-14-15 dated 05/06/2014 passed by Commissioner of Central Excise, COCHIN)

M/s. Popular Vehicles & Services Ltd
Kuttukaran Centre,
Mamangalam, Palarivation
Kochi - 682025
KERALA

Appellant(s)

Versus

The Commissioner of Central Excise,
Customs and Service Tax
C.R. Buildings,
I.S. Press Road,
Kochi – 682 018.

Respondent (s)

Service Tax Appeal No. 22328 of 2014

(Arising out of Order-in-Appeal No. TVM-EXCUS-000-COM-33-14 dated 07/04/2014 passed by Commissioner of Central Excise and Service Tax, Thiruvananthapuram.)

M/s. Popular Vehicles and
Services Ltd.
CIT Road, Killipalam, Karamana P.O
THIRUVANANTHAPURAM - 695002
KERALA

Appellant(s)

VERSUS

Commissioner of Central Excise,
Customs and Service Tax
Trivandrum
T.C.NO.26/334(1&2),
I.C.E BHAVAN,PRESS CLUB ROAD,
TRIVANDRUM - 695001
KERALA

Respondent(s)

AND

Service Tax Appeal No.20400 of 2016

(Arising out of Order-in-Original No.COC-EXCUS-000-COM-036/2015-16 dated 27.11.2015 passed by the Commissioner of Central Excise, Customs and Service Tax, Cochin.)

M/s. Popular Vehicles and
Services Ltd.
Kuttukaran Centre, Mamangalam,
Kochi – 682 025.

Appellant(s)

Versus

The Commissioner of Central Excise
Customs and Service Tax
C.R. Building
I.S. Press Road,
Kochi – 682 018.

Respondent(s)

Appearance:

Mr. Kuriyan Thomas, Advocate
MENON & PAI
IS PRESS ROAD, COCHIN
KOCHI - 682018
KERALA

For the Appellant

Mr. Gopakumar
Jt. Commissioner (AR)

For the Respondent

CORAM:

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

Final Order No. 20178-20182 / 2020

Date of Hearing: 12/02/2020
Date of Decision: 12/02/2020

Per : P. ANJANI KUMAR

M/s. Popular Vehicles and Services Ltd., the appellants, are authorized dealers of Maruti Udyog Ltd.; they are also engaged in business of selling used or pre-owned vehicles through their True Value Division. Alleging that the profit earned by the appellant on purchase and sale of used cars, is a consideration towards the Business Auxiliary Service rendered by the appellants, Revenue issued three show-cause notices to the appellants covering the periods 1.10.2006 to 30.9.2011; 1.10.2006 to 30.9.2011 and 1.4.2007 to 31.08.2012 in respect of their Kochi, Kottayam and Thiruvananthapuram units, respectively. The show-causes notices were confirmed by different Order-in-Original and appeals numbers ST/20449/2014; ST/20450/2014; and ST/22328/2014. Department also alleged that the incentives and discounts received by the appellants from M/s. Maruti Suzuki India Ltd. (M/s. MSIL) also attract levy of service tax under Business Auxiliary Service. Two show-cause notices were issued and were confirmed and hence, appeal Nos.No.ST/20400/2016 and ST/23209/2014 were filed. Since the appellant is one and the issues therein are identical, all the give appeals are taken up for decision together.

2. Learned counsel for the appellants submits that holding the profit earned by the appellant in case of sale of used cars is not tenable under law as the basic ingredient of charge under Section 65(19) of Finance Act, 1994 is not satisfied. Department has tried to levy service tax because of the fact that the transfer of registration under Motor Vehicles Act, 1988 occurs after the ownership has been transferred from the prior owner to the appellants. The learned counsel submits that during the time of refurbishment of the vehicle, in cases required, the ownership of the vehicle rests on the appellants and as such, no service is rendered to anybody else, leave alone, Business Auxiliary Service. It is to be noted that none of the sellers of the cars in their statements accepted that there has been an expressed consent by them for refurbishing the cars on their behalf or sale of cars on their behalf. Learned counsel further submits that at that time of sale of vehicle, the appellants are paying the applicable VAT as it involves transfer of movable property. Since the transaction is a trading activity, no service tax is payable in view of ***BSNL vs. UOI: 2006 (2) STR 161 (SC)***. Learned counsel submits that sale or purchase of goods is specifically excluded from the definition of service under Section 65B(44) and therefore, no service tax can be levied on the profit margin earned by the appellants. He submits that the issue is squarely covered in the appellant's favour by the decision of the Tribunal in the case of ***Sai Service Station Ltd. vs. CCE: 2015 (37) STR 516 (Tri-Bang.)*** which was affirmed by the High Court of Kerala as reported in ***2017 (7) GSTL 17 (Kerala)***. Learned counsel also submits that the impugned order has taken incorrect figures inasmuch as figures applicable for Appeal ST/20449/2014 were also taken for adjudicating the case which is under appeal in ST/20450/2014; even when the same was specifically brought out, learned Commissioner did not consider the same.

3. Regarding the other issue, the learned counsel submits that the transaction between the appellant and MSIL involves purchase / sale of vehicles / spares. Once the appellant purchases the vehicles / spares from

M/s. MSIL, the appellant becomes owner of the said goods and at the time of granting incentive / discount, goods do not belong to M/s. MSIL. Therefore, no business of MSIL is canvassed or supported by the activities of the appellant. Therefore, the provisions of Section 65(19) of the Finance Act, 1994 are not attracted. He further submits that incentive and discounts received by the appellant are in the nature of trade discounts and VAT has been paid on the same. For the value which has already suffered VAT cannot be charged to service tax under the Finance Act, 1994 as both of them are mutually exclusive. It is to bring to the notice that purchase and sale of goods is excluded from the purview of service under Section 65B(44) of Finance Act, 1994. Looking into the fact that the appellants have no right to claim the incentives from M/s. MSIL, the same cannot be treated as any renumeration for any service rendered by the appellant. Learned counsel submits that CESTAT vide Final Order No.23147/2017 and Final Order No.23168/2017 dated13.12.2017 have decided the issue in the case of appellant's themselves in favour of the appellant; Tribunal relied upon the decision rendered in the case of 2014 (35) STR 625 (Tri.-Mumbai). Learned counsel also relies upon ***Toyota Lakozy Auto Pvt. Ltd. vs. CST and CE : 2017 (52) STR 299 (Tri.-Mum.)***.

4. Learned AR for the Department reiterates the findings of the respective Orders-in-Original.

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

6. Coming to the issue of taxability of profit earned by the appellants on sale/purchase of used cars, we find that the issue is already settled in favour of the appellants in the case of ***Sai Service Station*** (supra). We find that the Tribunal has held as follows:

> *"**6.**...........*
>
> *"15. It is quite surprising and shocking to note that the lower Court had noticed that Ext. B5 cannot be accepted because it is not registered and sufficiently stamped as required under the Registration Act and Transfer of Property Act. It appears that the lower Court has omitted to notice that the transaction involved in this case is the sale of*

vehicle which is a movable article and it is governed by the provisions of the Sale of Goods Act. Section 4 of the Sale of Goods Act read as follows :

4. Sale and agreement to sell. - *(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.*

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Once the price is received and the property is delivered, the sale is complete. Going by the definition of sale, when the property is delivered for a price, the sale is complete. The Trial Court seems to be under the impression that unless the registration is effected there is no complete sale. The sale does not depend upon registration at all. Registration before the RTO is a consequence of sale. Therefore, the Trial Court was not justified in discarding Ext. 85 for the reason mentioned by it."

7. *As can be seen, the observations are very clear and for considering a transaction as to whether it is a sale or not, what is required to be seen is not the aspect of registration but whether the price has been received and the property has been delivered or not. In this case, as observed by the Commissioner himself in paragraph 55, the property is delivered and the price has been received by the seller of the old car. Therefore, the first transaction cannot be considered as the one which is not a sale. There is no doubt as to the second transaction whether it is a sale or not. Once the first transaction is considered as sale, it means that the vehicle has been purchased by the appellant who subsequently sold them. Therefore it becomes totally a transaction of purchase and sale of old vehicles. It is not the case of the Revenue that refurbishing of the vehicle, repair and other activities undertaken by the appellants when the vehicle was in their possession is a service rendered to any person. These activities are undertaken as value addition by them and it is neither for the seller nor the purchaser. It is an activity undertaken to increase the value of the vehicle so that they get the maximum return out of it. Therefore we cannot say that there is a service element in this transaction either. As regards the invoices produced before us there is no clarity being there as to whether the*

> *Commissioner has seen these documents. We find that the Commissioner has observed that he has scrutinized the financial accounts, reply submitted and the data available with him. Moreover, at the time of investigation it is difficult to believe that no invoices were recovered. In any case there is no observation saying that the vehicles were not sold under an invoice by the appellants. Therefore we do not find any merit in this submission."*

As submitted by the appellants, we find that the above order has been upheld by the Hon'ble High Court of Kerala which has gone in detail into the issues involved at length and they have upheld the decision of the Tribunal.

7. Coming to the second issue, as already noted above, the issue is settled in favour of the appellant's themselves by this Bench relying on ***CST, Mumbai-I vs. Sai Service Station Ltd.: 2014 (35) STR 625 (Tri.-Mum.)*** wherein it was observed that:

> "5……
>
> > *"18. In respect of sales/target incentive, the Revenue wants to tax this activity under the category of business auxiliary service. We have gone through the circular issued by MUL which provides certain incentives in respect of cars sold by the assessee-respondent. These incentives are in the form of trade discount. In these circumstances, we find no infirmity in the adjudication order whereby the adjudicating authority dropped the demand. Hence, the appeal filed by the Revenue has no merit."*

8. In view of the above, we find that both the issues are no longer *res integra* as the issue stands squarely settled in favour of the appellants. In view of the above, the appeals are allowed with consequential relief, if any, as per law.

(Operative portion of the Order was pronounced
in Open Court on **12/02/2020.**)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

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