

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI**

Appeal No.ST/75/2012

[Arising out of Order-in-Appeal No.CMB-CEX-000-APP-207-11 dt. 21.11.2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore]

Shiva Automobiles Private Ltd.

Appellant

Versus

Commissioner of Central Excise,
Coimbatore

Respondent

Appearance :

Ms. S. Yogalakshmi, Advocate
For the Appellant

Shri K.P. Muralidharan, AC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 02.05.2018

FINAL ORDER No. 41429 / 2018

Per Bench

The brief facts of the case are that the appellant is an authorized service dealer of Mahindra & Mahindra (hereinafter referred to as manufacturer) and is engaged in sale and service of motor vehicles. On the basis of arrangement with manufacturer, in respect of vehicles sold by manufacturer either directly or through

authorized dealers, appellants provided warranty services free of cost to the customers which includes both provision of service as well as use of spares and consumables. The labour charges are paid by manufacturer and the value of spares and consumables are being reimbursed. The appellant is discharging service tax on labour charges at appropriate rate. The department was of the view that the value of spares parts and consumables used during free replacement / warranty services are also includable in the total taxable value for discharging service tax. Accordingly, show cause notice was issued proposing to demand the service tax along with interest and also for imposing penalties. After due process of law, the original authority confirmed the demand but however dropped the penalty imposed under Section 76 of Finance Act, 1994. In appeal, Commissioner (Appeals) upheld the same. Aggrieved, the appellant is now before the Tribunal.

2. On behalf of the appellant, Ld. Counsel Ms. Yogalakshmi submitted that activity of the appellant involves both provision of service as well as sale of goods. The appellant has correctly discharged service tax on labour charges collected from the manufacturer on warranty replacement works. The value of spares / parts / component replaced is recovered from manufacturer with

applicable VAT / CST. The transaction in relation to spares and parts is sale of goods and the appellants having discharged VAT on such goods is not liable to pay service tax on such amount. The CBEC in Circular No.96/7/2007-ST dt. 23.08.2007 has clarified that when a transaction is treated as sale of goods and subjected to levy of sales tax, the same cannot be subjected to levy of service tax. Further these expenses are reimbursed by the manufacturer and such reimbursable amounts are not subject to levy of service tax as laid down by the Hon'ble Court in the case of *Intercontinental Consultants and Technocrafts Pvt. Ltd. Vs UOI* – 2012-TIOL-966-HC-DEL = 2013 (29) STR 9 (Del). Ld. Counsel also relied upon the decision in the appellant's own case vide Final Order No.40602/2016 dt. 06.04.2016 as well as the decision passed in the case of *ABT Ltd. & Others Vs CCE Coimbatore* vide Final Order No.40618-40628/2018 dt. 14.03.2018.

3. Ld. A.R Shri K.P. Muralidharan reiterated the findings in the impugned order.

4. Heard both sides. The issue that arises for consideration is whether the appellants are liable to pay service tax on the value of spares / parts on which VAT has been discharged. The said dispute has been considered by the Tribunal in the appellant's own case cited

supra as well as in *ABT Ltd & Others Vs CCE Coimbatore*. The relevant portions are noticed in the case of *ABT Ltd*. as under :

"5. After considering the submissions made by both sides as well as perusal of records, we find that the service tax demand has been raised by Revenue on the cost of spare parts used while rendering the warranty as well as extended warranty service. After a perusal of some of the sample invoices raised for such work, we note that the spare parts have in fact been sold on payment of VAT. Consequently, we are of the view that the cost of spare parts cannot be included for purposes of levy of service tax. Such demand of service tax is not justified and hence are set aside.

6. In respect of amounts recovered by way of extended warranty premium, we note that there is no justification to consider such amounts as reimbursements of the cost of spares by the manufacturers of motor vehicles. The extended warranty premium amounts are liable to payment of service tax under the appropriate category of service but it stands submitted that the service tax demand thereon has been paid by the manufacturers of motor vehicles to whom such premium has been transferred. Consequently, we find no justification for demand of service tax of such amounts which are also set aside."

Following the same, we are of the view that the demand cannot sustain and requires to be set aside. In the result, impugned order is set aside and appeal is allowed with consequential relief, if any, as per law.

(operative part of the order pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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