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

ST/6/2008

(Arising out of Order-in-Original No. 120/2007 dated 28.9.2007 passed by the Commissioner of Service Tax, Chennai)

M/s. Srivari Enterprises Appellant

Vs.

Commissioner of Service Tax, Chennai Respondent

Appearance

Shri V. S.Manoj, Advocate for the Appellant
Shri A. Cletus, Addl. Commissioner (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 : **10.04.2018**
Date of Pronouncement: **10.05.2018**

Final Order No. **41443 / 2018**

Per Bench

Brief facts are that M/s. Srivari Enterprises, a proprietary concern was functioning as outsourcing agency for banks/ financial institutions namely ICICI Bank, ICICI Home Finance Company Ltd., HDFC Bank, Countrywide, ING Vysya Bank etc. since 2001. Shri V. Vasudevan is the sole proprietor of M/s. Srivari Enterprises. Based on intelligence, that appellant was not discharging the service tax liability on the activities which fall under the Business Auxiliary Service, show cause notices were issued which after adjudication culminated in confirmation of demand of Rs.90,46,925/- along with interest for the period July 2003 to March 2006 and also penalties imposed under section 76 besides equal penalty of Rs. One crore under section 78 of the Finance Act, 1994. Hence this appeal.

2. On behalf of the appellant, ld. counsel Shri V.S. Manoj made oral as well as written submissions. Firstly, it is argued that the appellant is a proprietorship concern and not a commercial concern and therefore is not liable to pay service tax under Business Auxiliary Service. That during the relevant period, definition of Business Auxiliary Service covered services provided by "commercial person" only which was later amended by substituting the words 'provided by any person'. Thus, the appellant not being a commercial concern is not liable to pay service tax. Secondly, the activities rendered by the appellant as alleged in the show cause notice would not fall within the definition of Business Auxiliary Service as it stood during the disputed period. The appellant was engaged in the activity of verification of details of customers on behalf of the banks and financial institution. This included verification of credentials such as address, work place, telephone, residence etc. of the customers of the bank. The Tribunal in the case of Katiyil & Associates Vs. Commissioner of Central Excise –

2016-TIOL-354-CESTAT-DEL has held that telephonic verification of details given in an application submitted to various banks would not amount to evaluation of customers or promoting/marketing the services of banks falling under Business Auxiliary Service. Similar view was taken in the case of S.R. Kalyanakrishnan Vs. Commissioner of Central Excise, Cochin – 2007-TIOL-1914-CESTAT-BANG. The appellant is not engaged in promotion or marketing of sale of goods or services and is not providing any customer care services. They are not engaged in promotion of goods or services on behalf of the client or provision of services on behalf of the client. None of the activities carried out by the appellant would fall within the definition of Business Auxiliary Service. It is also argued by the ld. counsel that though the appellant was engaged in collection of overdues from the customers, this is nothing but recovery of installments from defaulted customers. Such an activity would fall within the definition of recovery agent which was brought within the service tax net only with effect from 1.5.2006. Thus, the activity of recovery of installments from defaulted borrowers cannot be classified under Business Auxiliary Service since the more specific description of the activity would fall under 'Recovery Agent Service' and not Business Auxiliary Service. The ld. counsel has also strongly argued on the ground of limitation. The period involved is July 2003 to March 2006 and the show cause notice is dated 27.4.2007. In the instant case, the issue is purely subject matter of interpretation and whether the activity of the appellant would fall within the taxable service of Business Auxiliary Service is highly contentious due to the repeated amendments brought to the definition of BAS. The department has not established any evidence that the appellant has indulged in any willful act of suppression or fraud with intent to evade payment of service tax. That the invocation of extended period is therefore not justified.

3. The ld. AR Shri A. Cletus reiterated the findings in the impugned order. He adverted to the definition of Business Auxiliary Service and submitted that the appellant was engaged in verification of the details of prospective customer of the bank. That this activity is covered by the definition of Business Auxiliary Service as it stood prior to 10.9.2004 and thereafter. The decision relied by counsel for appellant in the case of Katriyil Agencies is not applicable to thef acts of this case. So also the appellants were engaged in collecting the installments and also follow-up actions for repayment of defaulted installments. The argument of the ld. counsel that the appellant was engaged in recovery of debt and thus is a recovery agent is factually incorrect as they are engaged in collection of EMIs (Installments from the customers). Thus, acting as a collecting agent, their activity is covered by the definition of Business Auxiliary Service. The adjudicating

authority has gone into the details of the agreement entered between the appellant and various banks and financial institutions and analyzed the activities carried out by the appellant. They were engaged in bill preparation, telephone verification, business verification, document verification and negative data based check. After completion of verification, the duly signed verification reports are submitted to the bank to enable the bank to arrive at the decision whether to sanction loan / credit card. Thus, they were engaged in both verification as well as collecting installments and the decision in the case of Katiyil & Associates (supra) is distinguishable. Appellants had not taken registration from 1.7.2003 to 31.3.2004 and had taken registration only on 2.4.2004. Even after taking registration, they did not discharge the service tax liability till March 2006. The appellants are therefore guilty of willful suppression of facts with intent to evade payment of service tax. The show cause notice therefore issued invoking the extended period of limitation, is legal and proper. He relied upon the decision of the Tribunal in the case of Commissioner of Central Excise Vs. Oracle Financial Services – 2013 (31) STR 337 (Tri. Del.).

4. Heard both sides and perused the records.

5. The definition of Business Auxiliary Service as it stood during the period prior to 10.9.2004 and after 10.9.2004 is reproduced as under:-

Prior to 10.9.2004

(19) 'Business Auxiliary Service" means any service in relation to –

(i) Promotion or marketing or sale of goods produced or provided by or belonging to the client; or

(ii) Promotion or marketing of service provided by the client; or
(iii) Any customer care service provided on behalf of the client; or

(iv) Any incidental or auxiliary support service such as billing, collection or recovery of cheques, accounts and remittance, evaluation of prospective customer and public relation services and includes services as a commission agent, but does not include any information technology service.

After 10.9.2004

(19) "Business Auxiliary Service" means any service in relation to –

(i) Promotion or marketing or sale of goods produced or provided by or belonging to the client; or

(ii) Promotion or marketing of service provided by the client; or

(iii) Any customer care service provided on behalf of the client; or

(iv) Procurement of goods or services, which are inputs for the client; or

[Explanation, - For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;]

(v) Production or processing of goods for, or on behalf of, the client;

(vi) Provision of service on behalf of the client; or

(vii) A service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision,

And includes services as a commission agent, [but does not include any activity that amounts to manufacture of excisable goods.]

6. The ld. counsel for appellant has put forward various arguments on the merits of the case. The foremost one is that the appellant is not a commercial concern and therefore being

an individual is not liable to pay service tax during the relevant period, prior to 1.5.2006. For this he takes assistance of the decisions in the cases of Ashok Transport Agency Vs. Awadesh Kumar & Anr. (1998) 5 SCC 567. The said case deals with Rule 10 of Order XXX which deals with capacity to sue and be sued. In the present case, though appellant is a proprietary concern cannot be said that it is not a commercial concern. The name of the appellant itself reflects that it is not an individual but a commercial concern. The said decision is not applicable to the facts of the case before us and the argument is answered against the appellant.

7. By relying on the decision of Katiyil Associates (supra), ld. counsel has submitted that mere verification of credentials of the customer does not fall under the category of Business Auxiliary Service. On perusal of the facts of the case in Katiyil Agencies (supra), we find that the said decision cannot apply to the case before us for the reason that the appellant in Katiyil Agencies was engaged merely in verification of customer credentials. The activity of the appellant herein is not solely or merely verification of credentials of prospective customers but appellants were also engaged in other activities like preparation of invoices / Bills, collection / recovery of installments from the defaulters / borrowers of the bank etc. In our view, these activities are nothing but providing incidental or auxiliary services to HDFC Bank in collecting the overdue

installments etc. from the customers of HDFC and would definitely fall within the ambit of Section 65 (19)(iv) of the Finance Act prior to 10.09.1994 and Section 65 (19) (vii) after 10.09.2004. It is also to be kept in mind that the scope of incidental or auxiliary support service as enacted in 65 (19) (iv) /65(19)(vii) is given in the nature of inclusive definition and only example of the type of activity that would come within that category having listed therein. The collection of overdue installments and other outstanding payments from the customers of HDFC very clearly fall within the genre of the examples given in Section 65 (19) (iv)/Section 65 (19) (vii). In the event, we are of the considered view that the activities of the appellant would constitute BAS during the period of dispute and not recovery agent's service as argued by the Ld. Advocate.

8. We are unable to agree with the contention that the demand is barred by limitation. As seen from the SCN, the appellants had been providing these services from the period from which BAS was brought into the tax net, i.e. w.e.f. 01.07.2003. However, they did not discharge service tax and had suppressed the value of such services with intent to evae tax. It is also noted that even after taking registration on 02.04.2004, appellants did not pay service tax or file returns disclosing the value of these services provided by them. We are therefore convinced that there is no infirmity in the

invocation of extended period by the department to demand the tax liability evaded by the appellants.

9. In light of the discussions herein above, we do not find any merit in the appeal, for which reason the same is dismissed.

(Pronounced in open court on **10.05.2018**)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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