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

Application No. ST/MISC[CT]/41106/2017
Appeal No. ST/00219/2011

(Arising out of Order-in-Appeal No. 10/2010 (MST) dated 08.02.2011 passed by the Commissioner of Central Excise(Appeals), Chennai)

M/s. Ramkay Agencies : Appellant

Vs.

Commissioner of Service Tax, Chennai : Respondent
(Now Commissioner of GST & C.E.
Chennai South Commissionerate)

Appearance:-

Shri T. R. Ramesh, 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:**27.06.2018**

Final Order No. 41881 / 2018

Per Bench,

The issue in dispute concerns income received by appellants from various banks and financial institutions as commission, allegedly for providing service in relation to promoting and marketing various two-wheeler loan schemes of the latter. The adjudicating authority has confirmed the demand of Rs. 19,21,070/- with interest thereon on this score and has also imposed penalties under Sections 77 and 78 of the Finance Act, 1994. In appeal, the Commissioner (Appeals) vide the impugned order dated 08.02.2011 rejected the appeal. Hence, appellants are now before this forum.

2. Ld. Advocate Shri T. R. Ramesh, appearing for the appellant, submits that they do not have a case on merits, however, he contends that as the issue was subject matter of litigation, the demand has to be restricted only to normal period of limitation and, further, there cannot be any imposition of penalties. He relies upon the case law of *Brij Motors Pvt. Ltd. Vs. Commissioner of Central Excise, Kanpur, 2012 (25) S.T.R. 489 (Tri. – Del.)* and *Addis Marketing Vs. Commissioner of Central Excise, Mumbai, 2017 (50) S.T.R. 56 (Tri. – Mumbai)* in support of his contention.

3. On the other hand, Ld. AR supports the impugned order. He points out that the appellants have paid up the tax liability along with interest only after being pointed out by audit.

4. Heard both sides. We have gone through the facts.

5. Without doubt, the issue of taxability on the impugned services was mired in litigation and was set to rest only by the decision of the larger Bench of the Tribunal in *Pagariya Auto Center Vs. Commissioner of Central Excise, Aurangabad, 2014 (33) S.T.R. 506 (Tri. – LB.)*. Especially when there was confusion on this issue, nothing prevented the Department from having issued Show Cause Notices at regular intervals for the normal period of limitation. In the event, the argument that the matter came to light in respect of the appellants only after audit, will not wash in this case, especially when similar demands were being made against other automobile dealers on the same issue. We also find that the case laws relied upon by the Ld. Advocate support his contentions. In *Brij Motors Pvt. Ltd.* (*supra*), the Tribunal had restricted a similar demand for the normal period of limitation with the following observations

> *"14. The period involved in this appeal is 20-10-2004 to 18-12-2007. The Show Cause Notice was issued on 21-2-2008. As can be seen from the discussions above the matter was being interpreted by judicial forums in different ways as may be seen from the decisions quoted by the Appellants. The Higher Courts have been taking the view that in such situations the extended period of time cannot be invoked for raising demand. Even in the case of Bridgestone Financial Services the Tribunal has given the benefit for such reason. So we are of the view that the demand in this case can be sustained only to the extent covered in the normal period of limitation. In such a situation penalties are not imposable either."*

6. Following the ratio, we hold that the demand in this case is restricted to the normal period of limitation from the date of issue of Show Cause Notice, with interest liability as applicable. So ordered.

7. For the same reasons, there shall be no penalty. The Miscellaneous Application for change in C.T. is allowed. Appeal allowed on above terms with consequential benefits, if any, as per law.

(Dictated and pronounced in open Court)

(Madhu Mohan Damodhar)
Member (Technical)

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

Sdd