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

ST/00128/2011

[arising out of Order-in-Appeal No.03/2011, dated 03.11.2011 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore]

M/s. CITY MOTORS APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE, SALEM RESPONDENT

Appearance:

For the Appellant Ms. Amrutha Aravind, Adv.
For the Respondent Ms. T. Ushadevi, DC (AR)

CORAM:

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

Date of hearing/decision **29-03-2019**

FINAL ORDER NO.**40639 / 2019**

Per Bench:

The appellants are Authorized Dealers for M/s. Hero Honda Motors Ltd. Proceedings were initiated against them on the ground that they had collected amount from the customers under the new scheme called "Passport Bonus Card Scheme" on behalf of the manufacturer for servicing of motor vehicles and for benefits after the warranty period, during the period 2004-05 to 2008-09 and that though the said amounts were exigible to service tax liability, it has not been discharged by the appellant. The show-cause notice, dated 23.03.2009, *inter alia*, proposed recovery of an amount of Rs.3,52,768/- with interest under Business Auxiliary Service as per section 65(19) of the Finance Act, 1994. The show-cause notice also proposed imposition of penalties under various provisions of law. Original authority vide Order, dated 26.04.2010 confirmed the demand and imposed penalties as proposed in the show-cause notice. In appeal, Commissioner (Appeals) vide impugned order dated 03.11.2011 upheld the order of the original authority. Hence this appeal.

2. Today, when the matter came up for hearing, on behalf of the appellant, the learned counsel Ms. Amrutha Aravind submits that the appellants were only acting as agents of M/s. Hero Honda Motors; that they only collected the amount from the customers on behalf of the manufacturersand passed on to the manufacturer. She also contends that the appellants did not receive any commission or other incentives for such collection. The appellant has not received any consideration for such activity. Hence, the activity does not fall within the definition of Business Auxiliary Service.

2. On the other hand, the learned Authorised Representative for the Revenue Ms. T. Ushadevi, DC (AR) reiterates the impugned order.

3. Heard both sides.

4. We find that the learned counsel for the appellant Ms. Amrutha Aravind is correct in her assertions. The appellants were only collecting the amount on behalf of the manufacturers from their customers without any commission or any other incentives. There is no evidence to show that appellants retained any money so collected. When there is no inflow for the appellants, there may not be any allegation of such activity to come within the ambit of the definition of

"Business Auxiliary Services" under section 65(19) of the Act *ibid*. This being so, the impugned order to the contrary cannot sustain and will require to be set aside, which we hereby do. Appeal is allowed with consequential reliefs, if any, as per law.

(Dictated and pronounced in open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S)
MEMBER (JUDICIAL

ksr
04-04-2019

	DRAFT			Remarks
	I	II	III	
Date of dictation	**29.03.2019**			
Draft Order - Date of typing	**01.04.2019**			
Fair Order Typing	**04.04.2019**			
Date of number and date of dispatch	**04.04.2019**			