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

ST/40132/2017

(Arising out of Order-in-Appeal No.141/2016 dated 14.12.2016 passed by the Commissioner of Central Excise (Appeals – I), Madurai)

M/s. Sandhya Motors Appellant

Vs.

Commissioner of Central Excise, Madurai Respondent

Appearance

Shri M. Kannan, 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: **28.08.2017**

Final Order No. 41856/2017

Per Bench

Brief facts are that the appellants are registered with the service tax department under the category of servicing of motor vehicle and also subsequently registered on 4.5.2012 under the category of Business Auxiliary Service. During the course of audit, it was found that they were receiving consideration from various banking / non-banking financial institutions for the services provided for business promotion /

marketing services of the said companies and the amounts would be leviable to service tax under Business Auxiliary Service. A show cause notice was issued for the period October 2008 to March 2012 and after due process of law, the original authority confirmed the demand along with interest and imposed penalties. Being aggrieved, the appellant is now before the Tribunal.

2. On behalf of the appellant, ld. Counsel Shri M. Kannan strongly argued on the ground of limitation. He submitted that the appellant had taken registration in March 2012 and was discharging service tax liability on the said services with effect from 4.5.2012. The issue whether appellants are liable to pay service tax on such amounts received was doubtful and the issue was settled by the Larger Bench of the Tribunal in the case of Pagariya Auto Center Vs. Commissioner of Central Excise, Aurangabad - 2014 (33) STR 506 (Tri. - LB). That the appellant under a bonafide belief did not discharge the service tax for the said period. That in spite of the decision of the Larger Bench, the department has issued the show cause notice only on 16.4.2014 and therefore the demand is unsustainable being time-barred.

3. The learned AR Shri K.P. Muralidharan reiterated the findings in the impugned order. He submitted that the appellant had not discharged the service tax liability during the

Customs, Excise & Service Tax Appellate Tribunal disputed period and therefore the demand raised as well as penalty imposed are legal and proper.

4. Heard both sides.

5. In the decision of Pagariya Auto Center (supra), the Larger Bench has considered the issue whether the automobile dealers providing table space to financial institutions and collecting charges / commissions would come under the ambit of Business Auxiliary Service. Even though the said decision was passed on 12.9.2013, the department has issued a show cause notice only on 16.4.2014. We take note that there was much confusion whether such services are taxable or not, the issue had traveled upto the Larger Bench taking and the matter reached finality in the order dated 12.9.2013 of the Larger Bench. However, the department yet did not issue show cause notice proximate to that decision and within the period of limitation. This being the case, the proceedings initiated invoking extended period is hit by limitation. Accordingly, the impugned order is set aside as being time-barred and the appeal is allowed with consequential relief, if any.

(Operative portion of the order was pronounced in open court)

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

Sulekha Beevi

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

Rex

Customs, Excise & Service Tax Appellate Tribunal

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सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (CESTAT)
चेन्नै / CHENNAI