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

Appeal No. ST/201/2008

[Arising out of Order-in-Appeal No.48/2008-(SLM) (ST) dt. 09.06.2008 passed by the Commissioner of Central Excise (Appeals), Salem]

Andal Motors — Appellant

Versus

Commissioner of Central Excise,
Salem — Respondent

Appearance:

Shri V. Bharat, Consultant
For the Appellant

Shri A. Cletus, ADC (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 : 08.08.2017
Date of Pronouncement : 18-09-2017

FINAL ORDER No. 42111 / 2017

Excise & Service Tax Appellate Tribunal

Per Bench

The facts of the case are that Andal Motors (the appellants herein) are authorized dealers of Piaggio Vehicles (P) Ltd. and dealing with three wheelers (autos). It appeared that appellant had not paid service tax on GTA for the period January 2005 to March 2006 for the vehicles that were transported by various transport carriers where the freight was paid by them. In adjudication proceedings, original authority held that during the material period, appellant was entitled for availing abatement of only 75% in respect of the freight value. Original authority confirmed demand of tax liability of Rs.2,86,622/- with interest thereon and penalties under various provisions of law. On appeal, Commissioner (Appeals) vide impugned order dt. 09.06.2008 agreed with the findings of original authority and rejected the appeal. Hence this appeal.

2.1 On 08.08.2017 when the matter came up for hearing appellants were represented by Shri Bharath, Consultant who, at the outset, submits that appellant is a proprietaryship concern. He submits that they can either be a proprietary concern or a limited but there cannot be a person as "proprietary limited company" as has been contended in the impugned notice.

2.2 Consultant submits that as per the definition in Service Tax Rules, 1994, only factory, company, society, cooperative society, dealer of excisable goods or body corporate are persons who are liable to pay service tax in relation to the service under GTA. The appellant being a proprietaryship concern will therefore not become a person liable for paying service tax.

2.3 Mere registering understate Sales Tax authority and having TNGST and CST registration will not make appellant a body corporate incorporated under any statute.

2.4 Even if the appellant is liable to pay service tax, he would be eligible for abatement of 75% as per the notification. However, on this aspect, Commissioner (Appeals) has denied such abatement on the ground that appellant has produced invoices/bills issued by transporter and not consignment notes.

3. On the other hand, Ld. A.R Shri Cletus supports the impugned order.

4.1 Heard both sides and have gone through the facts. The core issue that comes up for appellate decision in this appeal can be summarized as follows :

(i) Whether appellant being a proprietaryship concern would be "specified person" liable to pay tax under Rule 2 (1) (d) (v) of Service Tax Rules in relation to services under GTA.

(ii) In case issue No.(i) is held in the affirmative, whether abatement of 75% extended vide Notification No.32/2004-ST can be availed by the appellant ?

4.2 For better understanding of the issue at hand, it would be useful to reproduce the provisions of Rule 2 (1) (d) (v) of Service Tax Rules, 1944 as under :

Customs, Excise & Service Tax Appellate Tribunal "(v) in relation to taxable service provided by a goods transport agency, where the consignor or consignee of goods is, -

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any company established by or under the Companies Act, 1956 (1 of 1956);

(c) any corporation established by or under any law;

(d) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any Part of India;

(e) any co-operative society established by or under any law;

(f) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder; or

(g) any body corporate established, or a partnership firm registered, by or under any law,

any person who pays or is liable to pay freight either himself or through his agent for the transportation of Such goods by road in a goods carriage;";

4.3 From a perusal of the SCN dt. 24.07.2006, it is seen that in para 3.1, it is alleged that appellant is a "Proprietary limited company" and also registered as "corporate' under Sales Tax for trading of goods, and as such they are liable for payment of service tax on the freight element. Intriguingly, however, in the adjudication order by original authority dt. 17.04.2007, this allegation has not been addressed at all and the tax liability proposed in the notice is confirmed (para 25) only on the grounds that "assessee in a statement deposed before Superintendent, Hqrs. Prev. Unit, Salem Commissionerate admitted to their having incurred freight charges for inward transportation and that due to their ignorance of service tax liability and also service tax provisions, they had not paid service tax on the freight charges paid during the material period. I also find that the service provider obtained service tax registration subsequently and paid appropriate service tax along with relevant interest. **<u>This goes to confirm their liability for payment of service tax."</u>**

4.4 Thus, just because the proprietor of a proprietaryship concern, whose level of education and degree of legal knowledge does not appear to be very high, on being interrogated by the officers makes an admission that he is liable to pay service tax liability, that would not be a justification for confirmation of tax liability especially without any legal basis thereat. Even the lower appellate authority while considering the appeal against this order has not gone into this aspect at all.

4.5 Be that as it may be, it would be necessary to go through the relevant provisions reproduced at para 4.2 above. On going through chose provisions, it is seen that if the consignee to be liable to pay freight, it has to be a factory registered under Factories Act, or any company established under Companies Act, or any corporation established by or under any law or any society registered under the Societies Registration Act etc. or any cooperative society established by or under any law or any dealer of excisable goods who is registered under the Central Excise Act, 1944 or the Rules made therein or any body corporate established or a partnership firm registered by or under any law. Being a proprietary concern, we of

Customs, Excise & Service Tax Appellate Tribunal the opinion that appellant as a consignee of GTA services will not fall under the category of "corporation, society or cooperative society". They are also not partnership firm or body corporate established by or under any law. The argument that appellant is registered under Central Sales Tax Act and Tamil Nadu General Sales Tax Act will not make them a body corporate since those registrations are only for the purpose of discharge of tax liability on sales effected and are required to be taken by all persons who have taxable turn over under those laws. In any case, the registration under CST/TNVAT have been issued only to proprietor "M. Mani, M/s.Andal Motors". Department has sought to assign the appellant as "Proprietary Limited Company". an entity which, in our opinion, does not exist. It is also not forthcoming from the facts on record that appellants are a dealer of excisable goods registered under the Central Excise provisions.

4.6 Viewed in this light, we find merit in the appellant's main plea that there can be no tax liability at all on them since they will not be covered under Rule 2 (1) (d) (v) of Service Tax Rules, 1994 or either in any of the guidelines listed therein in the capacity of a consignee of goods by Piaggio Vehicles (P) Ltd.

5. In view of foregoing, we are of the considered opinion that the impugned order upholding the demand of differential tax liability on the appellant in respect of GTA services availed by them cannot be sustained and will have to be set aside, which we hereby do. In

consequence, appeal is allowed with consequential benefits, if any, as per law.

(order pronounced in court on 18/09/2017)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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Customs, Excise & Service Tax Appellate Tribunal

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