

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH - COURT No.I

**Service Tax Appeal No.42249 of 2014**

(Arising out of Order-in-Appeal No.165/2014-ST dated 11-07-2014 passed by the Commissioner of Customs and Central Excise (Appeals), No.1, Foulk's Compound, Annai Medu, Salem 636 001)

**M/s. Anbu Automobile Agency**

**...Appellant**

13-B, Anna Salai  
Rasipuram – 637408  
Namakkal Dist.

**VERSUS**

**Commissioner of Central Excise**

**.... Respondent**

No.1, Foulkes Compound, Anaimeedu  
Salem 636 001

**APPEARANCE:**

Shri T. Shanmugam, Advocate  
For the Appellant

Shri N. Satyanarayanan, Assistant Commissioner  
For the Respondent

**CORAM :**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**  
**HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER No.40164/2024**

**DATE OF HEARING : 05.02.2024**

**DATE OF DECISION : 16.02.2024**

**ORDER : [Per Hon'ble Mr. P. Dinesha]**

This appeal is filed by the tax payer against the Order in Appeal  
No.165/2014-ST dated 11-07-2014.

2. From a perusal of the impugned Order-In-Appeal, we find that it is the case of the revenue that on verification of ST-3 returns of the appellant, they appear to have observed that the appellant had shown an income under the head "Incentive Received" apart from service charges for the service of vehicles. It further appeared to the revenue that the appellant was only acting as a selling agent of the main dealer of M/s. Bajaj Auto Ltd. at Namakkal, they were receiving vehicles from the main dealer and storing them in their showroom for which they were getting commission from the main dealer. Thus, it is the case of the revenue that the appellant was actively engaged in the business promotion of the main dealer and acting as a commission agent of the said main dealer and hence, the appellant was liable to pay service tax under the Business Auxiliary Services.

3. In the light of the above, a Show Cause Notice dated 22.04.2013 was issued covering the period October 2007 to March 2012 proposing *inter alia* to demand service tax of Rs.3,29,633/- and after adjudication, the Original Authority had passed Order-In-Original dated 04.04.2014 confirming the proposed demands in the Show Cause Notice, against which it appears that the appellant filed a first appeal before the Commissioner of Central Excise (Appeals), Salem.

4. It appears that the appellant mainly contented that the aggregate value of its receipts being less than the threshold limit prescribed by Notification No.6/2005-Service Tax dated 01.03.2005, as amended by Notification No.08/2008-S.T. dated 01.03.2008 and hence, the demands confirmed in the Order-in-Original was against the guiding principles laid down in the above Notifications, which is binding on the Revenue. The first Appellate authority in the impugned order having considered the pleas of the appellant, however, rejected the same. The lower Appellate authority is of the view that the exemption towards small service provider could not be claimed as the appellant had already paid service tax; once having remitted service tax and also collected such amount of service tax from customers, the threshold limit of exemption was not available to the appellant. It is against this order that the present appeal has been filed by the appellant.

5. Heard Shri Shanmugam T., Ld. Advocate for the appellant and Shri Satyanarayanan N., Ld. Assistant Commissioner for the Revenue and perused the documents available in the appeal folder. After hearing both sides we find that the only issue to be decided by us is "whether the demand sustained in the impugned order has any merit"?

6. (1) Firstly, it is the case of the Revenue that the appellant had promoted the business of main dealer, who himself was not into manufacture of any product so, there is no finding on to which product of the main dealer was being promoted by the appellant. Secondly, the scope of BAS is vast and hence, it is incumbent for the Revenue to clearly identify as under which sub-clause did the scope of 'service' alleged to be rendered by the appellant fall, which is also not forth-coming from the orders of lower authorities.

(2) We have also perused the notifications relied upon by the appellant, we have also perused the orders of lower authorities.

Clause 2 (i) which is relevant, reads as below:

"2. The exemption contained in this notification shall apply subject to the following conditions, namely:-

- (i) the provider of taxable service has the option not to avail the exemption contained in this notification and pay service tax on the taxable services provided by him and such option, once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year:

....  
 .....  
 ....."

From the above it is clear that a service provider has the option not to avail the exemption benefit under notification 6 abid and, clearly, once such option is exercised by the service provider **in a financial year**, then the same shall not to be withdrawn **during the remaining part of such financial year**. The take-away from the above is that during the same financial year if option to avail or not to avail the exemption is exercised, such option **shall hold good throughout the financial year**. That means, since each year is to

be considered independently, any exercise of the above option would end with that financial year and the same cannot act as a permanent block for all the subsequent years to come-in.

7. Moreover from the facts available on record, the revenue has nowhere disputed the claim of the appellant that the aggregate value of the taxable service for the years under dispute is less than the threshold limit prescribed under the above notifications. It has been held by the Hon'ble Apex Court in Commissioner of Income Tax, Madras Vs. Mahalakshmi Textile Mills Ltd [66 ITR 170] by a three judge bench, that when the grant of relief to a tax payer is justified on any ground, the Tribunal would be under a duty to grant that relief. Hence, we are of the view that the demand raised and confirmed in the impugned order cannot survive, for which reason the same requires to be set aside.

8. In view of the discussion above, we set aside the impugned order and allow the appeal with consequential benefits, if any, as per law.

(order pronounced in the open court on **16.02.2024**)

**(M. AJIT KUMAR)**  
MEMBER (TECHNICAL)

**(P. DINESHA)**  
MEMBER (JUDICIAL)

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