

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

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 42540 of 2015

(Arising out of Order-in-Appeal No. CMB-CEX-000-APP-133/2015 dated 30.09.2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-I), No. 6/7, ATD Street, Race Course Road, Coimbatore - 641 018)

M/s. Sree Saradhambal Automobiles (P) Ltd.

...Appellant

Iyer Hospital Road,
Opp-Stock Exchange,
Trichy Road, Singanallur,
Coimbatore – 641 005.

Versus

Commissioner of GST and Central Excise

...Respondent

Coimbatore Commissionerate,
No. 6/7, ATD Street, Race Course Road,
Coimbatore – 641 018.

APPEARANCE:

For the Appellant : Shri S. Durairaj, Advocate

For the Respondent : Shri Harendra Singh Pal, Authorised Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40290 / 2025

DATE OF HEARING : 21.02.2025

DATE OF DECISION : 28.02.2025

Per Mr. VASA SESHAGIRI RAO

This Service Tax Appeal No. ST/42540/2015
has been filed by M/s. Sree Saradhambal Automobiles (P)
Ltd. (hereinafter referred to as 'Appellant') assailing the
Order-in-Appeal No. CMB-CEX-000-APP-133/2015 dated

30.09.2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-I), Coimbatore upholding the Order-in-Original No. 04/2015 dated 30.01.2015 passed by the Additional Commissioner of Customs, Central Excise and Service Tax, Coimbatore confirming the demand of service tax and interest and also imposing penalties in respect of Show Cause Notices No. 32/2010(ADC) dated 13.08.2010, No. 16/2011 dated 01.08.2011 and Statement of Demand No. 3/2013-ADC dated 11.04.2013.

2. Brief facts of the appeal are as follows: -

2.1 The Appellants are the authorised dealer for M/s. Maruti Suzuki Ltd. At the time of vehicle sales, they arrange for the insurance of vehicles through insurance companies, who paid the service tax on the total premium. Out of that premium, incentive was given to the Appellants. Further, the insurance companies are liable to pay the service tax on reverse charge mechanism for the services received from the insurance agents.

2.2 The SCNs No. 32/2010 dated 13.08.2010 and Sl.No.16/2011-AC dated 01.08.2011 and SOD 3/2013-ADC dated 11.04.2013 were issued demanding a total service

tax of Rs. 24,01,082/- for the period from 01.04.2009 to 30.06.2012. The service tax was demanded on the incentives by alleging that the Appellants are "Actuary" and the services would fall under "insurance auxiliary services" under Section 65(55) and Section 65(105)(zl).

2.3 Appellants replied that they would not fall under the category of "Actuary". For the incentive, the insurance companies are liable to pay service tax under reverse charge mechanism as per Rule 2(1)(d)(iii) of Service Tax Rules, 1994 read with Notification No. 36/2004-ST dated 31.12.2004.

2.4 The Ld. Original Adjudicating Authority *vide* order dated 30.01.2015 has confirmed the demand by holding that the Appellants would fall under "intermediary/insurance intermediary" and therefore, reverse charge mechanism is not applicable. This order was upheld by Order-in-Appeal dated 30.09.2015 and hence, the Appellant has filed this appeal before this forum.

3. The Ld. Advocate Shri S. Durairaj appearing for the Appellant has argued that the impugned order is not sustainable for the following reasons: -

- (i) Services provided by an actuary, intermediary or insurance intermediary or an insurance agent in relation to general insurance business are covered as insurance auxiliary business as defined in Section 65(55), and the Appellant would not fall under actuary or intermediary/insurance intermediary as defined in Actuary Act, 2006 and Insurance Regulatory and Development Authority Act, 1999 respectively.
- (ii) The only other option is insurance agent for which the liability is on the insurance companies on reverse charge mechanism.
- (iii) Demands under identical circumstances were set aside for earlier periods by the Tribunal *vide* Final Order No. 40546/2018 dated 26.02.2018 and Final Order No. 41368/2018 dated 16.04.2018.

He has prayed for setting aside the impugned order and to allow the appeal with consequential relief.

4. The Ld. Authorised Representative Shri Harendra Singh Pal representing the Department has taken us through the impugned Order-in-Appeal dated 30.09.2015 and supported the grounds for rejection.

5. Heard both sides and considered the submissions made.

6. We find that in respect of the same Appellant, the Tribunal for the earlier periods has set aside the demands and penalties *vide* Final Order No. 40546/2018 dated 26.02.2018 and Final Order No. 41368/2018 dated 16.04.2018. The relevant portion of the Final Order No. 40546/2018 dated 26.02.2018 is extracted below: -

"4. Heard both sides. From the facts on record, we find that the appellant has been consistently contending that whenever customers purchase vehicles from them, they are informed about insurance provisions, which is mandatory as per the Motor Vehicles Act. Features of policies of different companies and the respective premium amounts fixed by those insurers are explained to the customers. The customers only choose the insurance company, and such selection does not influence or force upon the appellant. The appellant receives policy and premium amounts from the customer and sends it to the concerned insurance companies after which the latter pay incentives for the said activities.

5. The SCN has alleged that these activities of the appellant will bring them within the fold of "actuary" and hence they are required to pay service tax under the "Insurance Auxiliary Service". From the statutory provisions and requirements, for becoming an actuary, we find that appellants have to fulfil requirements mandated in the Insurance Act, 1938 read with the Actuaries Act, 2006. Further from page 29 of the compilation submitted by the Ld. Advocate containing Insurance Regularity and Development Authority (Appointed Actuary) Regulations, 2000, we find that insurer registered to carry on insurance business cannot carry on such business without an appointed actuary. Such actuary has to be, inter alia, a Fellow Member of the Actuarial Society of India, an employee of the life insurer (in case of Life Insurance business or General Insurance business), a person who possesses a Certificate of Practice issued by the Actuarial Society of India. Surely, the appellant does not possess any of these qualifications nor they have been appointed or registered as "actuary". This being so, the main plank of the SCN cannot survive

6. Possibly, based on these arguments of the appellants both the lower authorities have held that the appellant is an insurance intermediary and therefore the very same proposed service tax liability can be demanded from them under "Insurance Auxiliary Service". In our considered view, these conclusions of the lower authorities are beyond the scope of the SCN and therefore they cannot be sustained. In the light of the discussions above, the impugned order is set aside. In consequence, appeal is allowed with consequential relief, if any, as per law."

7. As the issue is no more *res integra* and in compliance to the judicial discipline, the impugned Order-in-Appeal No. CMB-CEX-000-APP-133/2015 dated 30.09.2015 cannot be sustained and so, ordered to be set aside.

8. Thus, the appeal filed by the Appellant is allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 28.02.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

MK

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)