IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No. 41195 of 2015

(Arising out of Order in Appeal No. 54/2015 (STA-II) dated 10.2.2015 passed by the Commissioner of Service Tax (Appeals – I) Chennai)

M/s. Popular Vehicles and Services Ltd. **Appellant**
No. 14, Saligramam, Arunachalam Road
Chennai – 600 093.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai South Commissionerate
MHU Complex, 692, Anna Salai
Nandanam, Chennai – 600 035.

APPEARANCE:

Shri Kuryan Thomas, Advocate for the Appellant
Shri N. Satyanarayanan, Authorized Representative for the Respondent

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Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NOS.41005/2025

Date of Hearing : 13.03.2025
Date of Decision: 11.09.2025

Per M. Ajit Kumar,

This appeal is filed against Order in Appeal No. 54/2015 (STA-II) dated 10.2.2015 passed by the Commissioner of Service Tax (Appeals – I) Chennai (impugned order).

2. Brief facts of the case are that the appellant is an authorized service station of Maruti Suzuki cars and are registered as service provider. During the audit by the department, it was noticed that they were also undertaking 'buying and selling of used cars' after refurbishment and replacement of spares in the said cars. The appellant did not pay service tax on such service of refurbishment of

old cars. Hence Show Cause Notice dated 18.11.2009 was issued to the appellant demanding service tax to the tune of Rs.4,62,466/- for the period from 2005 – 06 to June 2009. After due process of law, the Ld. Adjudicating Authority confirmed an amount of Rs.2,21,273/- pertaining to refurbishment / restoration along with interest and imposed equal penalty under sec. 78 of the Finance Act, 1994. In appeal, the Ld. Commissioner (Appeals) upheld the adjudication order. Hence this appeal.

3. Ld. Counsel Shri Kuryan Thomas appeared for the appellant and Shri N. Satyanarayanan, Ld. Authorized Representative appeared for the respondent.

3.1 Shri Kuryan Thomas Ld. Counsel for the appellant submitted that the appellant engages in the purchase and sale of pre-owned/used vehicles, with refurbishment activities conducted at its MTV unit and not at its authorised service station. The original authority nonetheless confirmed the demand, asserting that since both the Authorised Service Station and the MTV unit are located at the same premises, it must be presumed that refurbishment is performed by the Authorised Service Station. In the Order-in-Appeal, the Appellate Commissioner upheld the Service Tax demand, stating that the appellant acts merely as an intermediary between buyer and seller, without acquiring ownership of the refurbished vehicles. Furthermore, expenses incurred by the appellant for refurbishing purchased used cars, as detailed in the annexure to the show cause notice, were treated as income received from customers. Both the original and appellate authorities based their confirmation of the Service Tax demand on the premise that, at the time of refurbishment, the used vehicle does not become the property of the appellant. This assumption appears to stem from the fact that the mutation in the vehicle's registration certificate is effected only after resale to the ultimate purchaser, rather than upon acquisition by the appellant. However, this position is incorrect. The Ld. Counsel stated that upon payment of consideration and delivery, title to the vehicle passes from the prior owner to the appellant, in accordance with the Sale of Goods Act, 1930. The procedures under the Motor Vehicles Act, 1988 regarding mutation in RTO records are limited in scope and pertain primarily to third-party liability. This issue has been addressed by the Hon'ble CESTAT in **Sai Service Station Ltd. v. CCE** 2015 (37) STR 516 (Tri.-Bang.), wherein it was held that transfer of property occurs upon payment and delivery, with the mutation of registration being irrelevant for assessing Service Tax liability. Moreover, the Tribunal further ruled that no Service Tax is to be levied on refurbishment activities conducted by the appellant for itself during its period of ownership. This decision was affirmed by the Hon'ble High Court of **Kerala in CCE v. Sai Service Station Ltd.** 2017 (7) GSTL 17 (Ker.). In light of these settled judicial precedents, it is established that no Service Tax liability arises from refurbishment activities on pre-owned/used vehicles. Therefore, the appeal may be allowed with consequential relief to the appellant.

3.2 Shri N. Satyanarayanan, Ld. AR has reiterated the findings from the impugned order.

4. We have heard the rival parties and pursued the appeals and connected written submissions. We find that the issue is whether the appellant is required to pay service tax on the service portion involved in refurbishment while selling refurbished vehicle or whether the

refurbishment of purchased cars amounts to self service and no service tax is payable. The issue has been examined by a Coordinate Bench of this Tribunal in **Commissioner Of C. Ex., Cus. & S.T., Cochin Vs Sai Service Station Ltd.** (supra). The relevant portion is extracted below:

> 6. . .Therefore, the only point that arises for consideration is whether non-transfer of registration at the time of transferring possession of the old vehicle by the owner cannot be considered as a sale as held by the Commissioner or not. In this connection, we find that the decision of the Hon'ble High Court of Kerala [Premsankar K.G. Vs Sunil Krishnan [2014 (4) KHC 895], relied upon by the learned counsel is applicable to the facts of this case. Hon'ble High Court of Kerala in para-15 has made the following observations which in our opinion is relevant and therefore is reproduced below :
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> > "15. It is quite surprising and shocking to note that the lower Court had noticed that Ext. B5 cannot be accepted because it is not registered and sufficiently stamped as required under the Registration Act and Transfer of Property Act. It appears that the lower Court has omitted to notice that the transaction involved in this case is the sale of vehicle which is a movable article and it is governed by the provisions of the Sale of Goods Act. Section 4 of the Sale of Goods Act read as follows :
> >
> > > 4. Sale and agreement to sell. - (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.
> > >
> > > (2) A contract of sale may be absolute or conditional.
> > >
> > > (3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.
> > >
> > > (4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.
> >
> > Once the price is received and the property is delivered, the sale is complete. Going by the definition of sale, when the property is delivered for a price, the sale is complete.

> The Trial Court seems to be under the impression that unless the registration is effected there is no complete sale. The sale does not depend upon registration at all. Registration before the RTO is a consequence of sale. Therefore, the Trial Court was not justified in discarding Ext. 85 for the reason mentioned by it."

> 7. As can be seen, the observations are very clear and for considering a transaction as to whether it is a sale or not, what is required to be seen is not the aspect of registration but whether the price has been received and the property has been delivered or not. In this case, as observed by the Commissioner himself in paragraph 55, the property is delivered and the price has been received by the seller of the old car. Therefore, the first transaction cannot be considered as the one which is not a sale. There is no doubt as to the second transaction whether it is a sale or not. Once the first transaction is considered as sale, it means that the vehicle has been purchased by the appellant who subsequently sold them. Therefore it becomes totally a transaction of purchase and sale of old vehicles. It is not the case of the Revenue that refurbishing of the vehicle, repair and other activities undertaken by the appellants when the vehicle was in their possession is a service rendered to any person. These activities are undertaken as value addition by them and it is neither for the seller nor the purchaser. It is an activity undertaken to increase the value of the vehicle so that they get the maximum return out of it. Therefore we cannot say that there is a service element in this transaction either. As regards the invoices produced before us there is no clarity being there as to whether the Commissioner has seen these documents. We find that the Commissioner has observed that he has scrutinized the financial accounts, reply submitted and the data available with him. Moreover, at the time of investigation it is difficult to believe that no invoices were recovered. In any case there is no observation saying that the vehicles were not sold under an invoice by the appellants. Therefore we do not find any merit in this submission.

> 8. Since we have considered the facts and even though it was heard only as a stay application, we find that we have spent considerable time on the issue and heard the matter in great detail and after this in our opinion it would not be appropriate to postpone the final decision. Moreover, this is a recurring issue and this would only continue the litigation further since the show cause notices will continue to be issued and more orders will follow. Since we are convinced that appellants have made out a case in their favour completely and there is nothing left to be examined for coming to a proper conclusion, we consider that the appeal itself should be allowed at this stage and we do so.

5. This decision was affirmed by the Hon'ble High Court of **Kerala in CCE v. Sai Service Station Ltd.** 2017 (7) GSTL 17 (Ker.).

6. In the facts and circumstances of the matter, no service tax is payable on self-service and the appeal succeeds. The impugned order is hence set aside. The appellant is eligible for consequential relief, if any, as per law.

(Order pronounced in open court on 11.09.2025)

(**M. AJIT KUMAR**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

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