CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>NEW DELHI</u>

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 50932 of 2021

(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-152-20-21 dated 23.03.2021 passed by the Commissioner (Appeal) CGST & Central Excise, Indore)

M/s Baba Autolink Pvt Ltd **Appellant**
C/o Shri Jatin Rajpal (Director)
26-A, Govind Tower,
Sapna Sangeeta Road, Indore (M.P.)

VERSUS

Commissioner of Central Excise & CGST- Ujjain **Respondent**
Manik Bagh Palace,
Indore (M.P.)-452014

<u>APPEARANCE:</u>

Ms. Priyanka Goel, Advocate for the Appellant
Shri Mahesh Bhardwaj, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50510 / 2022

Date of Hearing: 01.06.2022
Date of Decision: 01.06.2022

ANIL CHOUDHARY:

Heard the parties.

2. The appellant is a dealer in automobiles and also provides after sale service. The issue involved in this appeal-allegation of short payment of service tax, non-payment of service tax on reverse charge

basis, irregular availement of Cenvat credit and late fee imposed for late filing, non-filing of return, further Rs. 10,000/- have been imposed by way of penalty under Section 77(1) for failing to appear on the date fixed for hearing.

3. As regards the first issue, I find that the bone of contention is that the appellant have not included receipts under the head ‘other income’ in their taxable turnover. Learned Counsel explains that under this head, the major receipt is on account of warranty claim receipt, which is prima facie for the price of the parts they have replaced under warranty, and the same is reimbursed by the manufacturing company. There is also an amount of 3,48,768/- under the head ‘depot charges’ which is explained to be in nature of ‘vehicle parking charges’ received from the manufacturer company. The learned Counsel explains that so far warranty claim is concerned, no service charge is there and hence no service tax have been calculated.

4. Having considered rival contention on this issue, I hold that service tax is not attracted on receipt for replacement of parts received from the manufacturing company. So far ‘depot charges’ are concerned, the same are in the nature of renting of immovable property, or for use of space, accordingly this amount is held to be taxable.

5. So far as the taxability under RCM on legal and professional expenses is concerned, I find that most of the payments are towards municipal tax, court fee, stamp paper expenses, chartered accountant fee, etc. Thus, I hold that only the amount of Rs. 1,32,626/- is taxable for the period 2016-17 and Rs. 43,751/- for the period April, 2017 to June, 2017.

6. So far as repair and maintenance are concerned, I find that there is no contract of service entered into with any particular service provider and amount has been incurred for repair and maintenance by way of petty expenses, most of them are below Rs. 1000/-. Accordingly, I hold that there is no service tax attracted on repair and maintenance expenses.

7. So far service tax on security charges under Reverse Charge Mechanism is concerned, I find from para 3.6 of the Show cause notice, that the appellant have already paid service tax on security services under Reverse Charge basis, and have also declared the same in the returns.

8. So far imposition of penalty under Section 77(1) r/w Rule 7 is concerned, the penalty of Rs. 84,000/- & Rs. 10,000/- have been imposed for late filing, non-filing of returns from the period April 2013 to June 2017.

9. As regards the disallowance of Cenvat credit of 3,06,939/- for the period October 2016 to June 2017, the same has been disallowed on the ground that the appellant-assessee have not filed their ST-3 return for the above period. Thus, it has been deemed that they have taken the Cenvat credit after delay of more than one year. Learned Counsel explains that in reply to Show cause notice, they have taken categorical stand that they have taken credit before one year from the date of receipt of voucher for the service, as permissible under the rules. It is further urged that on a harmonious reading of Rule 3 and Rule 9 of Cenvat Credit Rules, read with Rule 4 of Service Tax Rule, the only condition for taking credit is that the credit should be based on proper voucher and the credit should have been taken within a

period of 12 months from the date of the voucher. There is no such condition that for not filing of return within time, the Cenvat credit can be disallowed.

10. Learned DR appearing for the Revenue relies on the impugned order.

11. Having considered the rival contentions, I find that there is no adverse finding as regards not taking of credit within a period of 12 months from the date of the voucher. Accordingly this ground is allowed and it is held that Cenvat credit is allowed to the appellant.

12. Under these facts and circumstances and considering the fact that the appellant have maintained proper books of accounts and also paid the service tax. However, for the admitted delay in filing the returns, that the appellant have not filed return for the period October 2016 to June 2017. In this view of the matter, the imposition of penalty under Section 77(1) is upheld, however, the amount of penalty is reduced in total to Rs. 25,000/-. So far the penalty of Rs. 10,000/- is concerned for not appearing on the date of hearing, I find from the record of personal hearing in the order-in-original, there is no specific default pointed out by the adjudicating authority. Accordingly, this penalty is also set aside. Thus, the appeal is allowed in part.

13. To sum up-

i Demand on other income-

a) On Warranty claim, is set aside.
b) On Depot charges, is upheld.

ii Tax under RCM

a) On legal & professional expenses, set aside in part, upheld on Rs. (1,32,626+43,751), or Rs. 1,76,377/-
b) On Repair & maintenance-set aside

c) On security service- set aside

iii) Cenvat credit of Rs. 3,06,939-Allowed.

iv) Penalty under Section 77 for late filing returns –Reduce to Rs. 25,000/-.

v) Penalty under Section 77(1) Rs. 10,000/- for non-appearance is set aside.

(Dictated in open Court)

Anil Choudhary
Member(Judicial)

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