CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

SERVICE TAX APPEAL NO. 51408 OF 2017

[Arising out of Order-in-Original No. 18/Commr./Dehradun/2017 dated 28.3.2017 passed by the Commissioner, Customs, Central Excise & Service Tax, Dehradun]

M/s Oberai Motors Limited **Appellant**

Versus

Commissioner, Customs, Central Excise And Service Tax, Dehradun **Respondent**

Appearance

Shri Rajesh Gupta, Chartered Accountant for the Appellant
Shri Harshvardhan, Authorized Representative for the Respondent

CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing/Decision : 22.08.2022

Final Order No. 50783/2022

P.V. Subba Rao:

This appeal is filed by the appellant assailing order in original dated 28.3.2017 passed by the Commissioner. After hearing both sides and perusing the records, it is evident that the period involved in this case is 2010-2011 to 2014-2015 and the demand is on three services as follows:

S.No.	Particulars	Amount (Rs.)
1.	Demand on the value of service provided by way of servicing of motor vehicles	20,83,016
2.	Demand on renting of immovable property service	2,05,194
3.	Demand on Target Incentive received from M/s Tata Motors	1,42,36,655
	Total Rs.	**1,65,24,865**

2. With respect to the demand of service tax on servicing of motor vehicles, learned Counsel for the appellant submits that during the period they had serviced and repaired only intermediate commercial vehicles, light commercial vehicles and small commercial vehicles and such service was not taxable during the relevant period.

3. Learned Authorised Representative points out that this position was not taken by the appellant before the original authority and hence the demand was confirmed. This fact needs to be verified by the original authority so that a decision can be taken.

4. The second component of the demand is on the renting of immovable property service. The appellant has placed before us challans which, according to it fully discharge the service tax liability and, therefore, no further differential service tax is due. Learned Authorised Representative for the Revenue again points out that all these challans are being presented before this Bench for the first time. Neither the challans was produced before the original authority nor the fact that service tax had been paid was submitted before him. Therefore, these submissions also require verification of facts by the original authority.

5. The third component of the demand is on the Target Incentive received by the appellant on sales of the goods by it. If the appellant meets the “sales target”, the manufacturer of the automobile gives an incentive, which, according to the Revenue is chargeable to service tax and which according to the appellant is not. Learned Chartered Accountant for the appellant submits that

this issue is no longer res integra and it has been decided by this Bench in **Service Tax Appeal No. 58586 of 2013 M/s D.D. Motors Vs. Commissioner of Central Excise** (decided by Final Order No. 53587 of 2018 dated 6.11.2018) that such incentive is not chargeable to service tax. Learned Authorised Representative for the Revenue submits that since the matter has to be remanded to the original authority for verification in respect of demand of service tax on servicing of vehicles and on renting of immovable property this component of the demand can also be examined by the original authority considering the various precedent decisions of the Tribunal.

6. Both sides agreed that the matter may be remanded for the aforesaid purposes.

7. In view of the above, we set aside the impugned order and allow the appeal by way of remand to the original authority to consider the submissions now made before us as indicated above and any other relevant factors and pass a detailed order after giving opportunity to the appellant to present its case with all evidence which it may rely upon.

(Pronounced in open Court)

(Justice Dilip Gupta)
President

(P.V. Subba Rao)
Member (Technical)

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