

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH

SERVICE TAX APPEAL NO. 50720 OF 2017

(Arising out of Order-in-Original No. 1-3/Commr/DDN/2015 dated 11.01.2017 passed by the Commissioner, Customs, Excise & Service Tax, E Block Nehru Colony, Haridwar Road, Dehradun [UK])

**M/s. Shakumbhari Automobiles
Pvt. Ltd.**

...Appellant

Versus

CCE, Dehradun

...Respondent

APPEARANCE:

Shri Rajesh Chhibber, Advocate for the appellant.

Shri Harshvardhan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: 23.02.2023

Date of Decision: 28.04.2023

FINAL ORDER NO. 50563/2023

JUSTICE DILIP GUPTA:

M/s. Shakumbhari Automobiles Pvt. Ltd.¹ has sought the quashing of the order dated 11.01.2017 passed by the Commissioner, Customs, Central Excise and Service Tax, Commissionerate Dehradun² adjudicating the three show cause notices. The first show cause notice dated 15.04.2014 is for the period October 2008 to March 2013; the second show cause notice dated 31.03.2015 is for the period 2013-14; and the third show cause notice dated 09.03.2016 is for the period 2014-15. Out of the demand proposed in

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1. the appellant
 2. the Commissioner

the aforesaid three show cause notices, the Commissioner has confirmed the demand of Rs. 14,89,496/- with penalty and interest and has dropped the demand of Rs. 4,09,43,169/-.

2. The appellant is an authorised Maruti Car Agency in Roorkee. It purchases and sells Maruti Cars and spare parts and also carries out work of repair of maruti vehicles.

3. The issue involved in the present appeal is regarding the taxability of the amount received by the appellant from the customers who purchased vehicle for assisting the registration of the vehicles with the Regional Transport Office tax under 'business auxiliary service'³ as defined under section 65(19) of the Finance Act, 1994⁴ and made taxable under section 65(105)(33b) of the Finance Act. The first show cause notice dated 15.04.2014 demanded service tax under BAS. The subsequent two show cause notices did not contain any fresh proposal or allegation but merely referred to the first show cause notice dated 15.04.2014. Thus, the appellant was required to show cause by all the aforesaid three show cause notices as to why the services rendered by the appellant should not be classified under BAS.

4. The Commissioner has confirmed the demand with regard to the there all the show cause notices by giving a categorical finding that the amount received by the appellant was taxable under BAS. The relevant portions of the order passed by the Commissioner are reproduced below:

"22. **The third issue** involved in the present dispute **is whether the amount received by the party from third parties i.e. Individuals who were engaged in**

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3. **BAS**
4. **the Finance Act**

providing services related to processing and assistance in registration of vehicles with the Regional Transport Office could be subjected to service tax at the end of the party.

22.1 As per the facts available on records, the various Individuals were independently engaged in the business of providing registration related services to their clients. In respect of the customers who buy vehicles from M/s. SAPL, the party collects an amount (which includes statutory registration fee and some extra charges) from them and transfers the entire amount to these Individuals on the understanding that they would process the registration related formalities with the Regional Transport Office and get the registration issued in the name of their customers. The Individuals get the registration number for the customers of M/s SAPL. **During the course of providing these services, they earn some profit out of the extra charges inbuilt in the amount paid to them by M/s. SAPL.** From the profit so earned they pay a certain amount to M/s SAPL which is recorded as Income other than sales by the party. **This is the income which the department proposes to tax under the category of Business Auxiliary Service.**

22.2 The definition of Business Auxiliary Service is reproduced in Para 21.2 above. The party has pleaded that the income received by them was chargeable to income tax and not to service tax as they were not providing any services. **I observe that a consideration is paid by any person in relation to purchase of either some goods or services. In the instant case the consideration is not related to any goods. The persons paying the consideration i.e. the Individuals engaged in providing registration related services have secured their business on account of clients provided by the party. On this business they earn some profit which is shared with the party.** As per normal trade practice, the payment made to the party by these Individuals is an expense at their end for securing their business. Thus, the party has acted as an intermediary

between these Individuals and the buyers of vehicles, who till that point, were unaware of the services provided by these Individuals. This whole activity was undertaken with the purpose of earning the agreed share from these Individuals. **Therefore, I find that the party has consciously rendered services in relation to promotion and marketing of the services' provided by these Individuals for which the consideration has been received by them. I find that these services are covered as 'Business Auxiliary Services' under clause (ii) of sub section (19) of Section 65 of the Act.**

22.3 **I further find that for period w.e.f. 01.07.12 too this activity is covered within the scope of 'service' as defined under Section 65B(44) of the Act.** There is nothing to show that these services were either covered in the negative list given in Section 65D of the Act or were exempted under any exemption notification.

22.6 Accordingly, in the light of the facts of the present case I hold that the consideration received by M/s. SAPL from the third parties was in lieu of rendering taxable services on which the tax was not paid by them. Thus, the service tax amounting to Rs. 14,89,476/- (7,21,677 + 3,45,730 + 4,22,069) was recoverable from them along with interest as per the provisions of the Act."

(emphasis supplied)

5. Shri Rajesh Chhibber, learned counsel appearing for the appellant has submitted that the issue raised in the appeal for the period prior to 01.07.2012 stands decided in favour of the appellant by the decision of the Tribunal in **M/s. Arpana Automotives Pvt. Ltd. vs. Commissioner of Customs & Central Excise⁵**, which was subsequently followed by the Tribunal in the case of the appellant itself in **M/s. Shakumbhari Automobiles Pvt. Ltd. vs.**

5. **2016 (43) S.T.R. 397 (Tri.)**

Commissioner of Central Excise & Service Tax, Meerut-I⁶.

Learned counsel for the appellant, however, for the period post 01.07.2012 placed reliance upon the decision of the Commissioner (Appeals) dated 19.12.2018 in the matter of the appellant, which appeal had been filed to assail the order dated 21.04.2017 passed by the Assistant Commissioner.

6. Shri Harshvardhan, learned authorised representative appearing for the department, in view of the aforesaid decision of the Tribunal in **M/s. Shakumbhari Automobiles** did not seriously dispute the taxability for the period prior to 01.07.2012 but submitted that for the period post 01.07.2012 the Commissioner was justified in confirming the demand since there was no requirement to classify the services under any particular category.

7. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the Department have been considered.

8. The issue for the period prior to 01.07.2012 is covered by the decision of the Tribunal in **Arpana Automotives**. The observation of the Tribunal are as follows:

"6. xxxxxxxxx. As regards the Service Tax liability on the amount retained by appellant on the RTO fees paid and collected from the customers, we find that the Service Tax liability is confirmed on the appellant and other category Business Auxiliary Service. xxxxxxxxxx.

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It can be seen from the above definition prior to 10-9-2004 the services may not be applicable in issue in hand, as appellant may not be providing promotion or marketing of service provided by the client or any

6. Service Tax Appeal No. 50487 of 2015 decided on 18.10.2018

customer care service on behalf of the client. Appellant is helping their customer who purchase the vehicles with registration as per Motor Vehicle Act. Such registration is mandatory fees. The appellant, presently is working by hire, which are not in respect of any service as the enumerated in the definition of Business Auxiliary Service either prior to or post-10-9- 2004. 7. **In our considered view helping the purchaser with registration with the RTO, cannot be considered by Business Auxiliary Service, in view of the foregoing, we hold the Service Tax demand of the amount retained by the appellant in respect of RTO registration fees is not sustainable. The impugned order is set aside.** This Bench in the case of Wonder Cars Pvt. Ltd. v. Commissioner of Central Excise, Pune-I - 2016-TIOL-190-CESTATMUM = 2016 (42) S.T.R. 1055 (Tri.-Mum.), has held that amount collected as extra charges for RTO registration is not covered under "support services of business and commerce".

(emphasis supplied)

9. This decision was followed by the Tribunal in the case of the appellant in **M/s. Shakumbhari Automobiles Pvt. Ltd.**

10. In view of the aforesaid discussion the Commissioner was not justified in confirming the demand of service tax under BAS for the period prior to 01.07.2012.

11. In regard to the period post 01.07.2012, the issue was decided in favour of the appellant by the Commissioner (Appeals) in the order dated 19.12.2018 and the relevant portions of the order passed by the Commissioner (Appeals) are reproduced below:

"6.1 Regarding the amounts pertaining to the registration of the vehicles, I find that Hon'ble CESTAT, Mumbai, in the case of Arpana Automotive Pvt. Ltd., as reported in 2016(02) LCX0141 have held that amount charged to help motor vehicle buyers to avail registration with RTO under Motor Vehicle Act does not amount to Business Auxiliary Service or

Business support service. Hon'ble CESTAT, Mumbai in case of My Car Pune Pvt. Ltd.in Appeal No. ST/89422/13 have also drawn the same/ similar conclusion. The demand of the service tax in respect of the registration of the motor vehicles, is therefore, not tenable.

6.2 **I find that the demand of the service tax has been made, for the period from 1.7.2012 considering the service tax to be payable as the alleged services constituted a declared service.** In this regard, I find that for the purpose of the service tax the activity must be carried out by a person for any other person for a consideration. As discussed above, the appellant did not provide any services to the persons from whom the amounts were recovered and as such the amounts so received/ billed did not constitute a consideration for carrying out any activity for the persons from whom the amounts were so received. **Further, for an activity to be considered a declared service as defined in clause (e) of the Section 66E of the Finance Act, 1994, the two parties must agree for the act or for refraining from an act, for a consideration. In the case of the appellant, though certain amounts, as mentioned above, were billed/ received, there was no such agreement for an act or refraining from an act between the appellant and any other person and no consideration was agreed upon. In view of the above, the amounts received/billed by the appellant neither constituted a consideration for providing a Business Auxiliary Service or Business Support Service prior to 1.7.2012 nor did the same fall within the ambit of a declared service with effect from 1.7.2012.** The demand of the service tax confirmed/ vide impugned order is therefore not sustainable."

(emphasis supplied)

12. It would be seen from the aforesaid order passed by the Commissioner (Appeals) that even for the period post 01.07.2012 the activity could not have been considered as a declared service and,

therefore, the demand could not have been confirmed. Learned counsel for the appellant also stated that the said order passed by the Commissioner (Appeals) has attained finality and this fact has not been controverted by the learned authorised representative appearing for the department.

13. Even otherwise, the second and the third show cause notices do not propose to demand service tax under section 65B(44) of the Finance Act and merely refer to the first show cause notice which, as noticed above, proposed demand of service tax under BAS. Apart from the fact that the demand could not have been confirmed under section 65B(44) of the Finance Act for the reason that the activity cannot be considered as a declared service under section 66E(e) of the Finance Act, a demand cannot also be confirmed on an allegation other than an allegation contained in the show cause notice. Thus, the Commissioner was not justified in confirming the demand for the period post 01.07.2012.

14. The impugned order dated 11.01.2017 passed by the Commissioner, therefore, deserves to be set aside and is set aside. The appeal is, accordingly, allowed.

(Order pronounced on **28.04.2023**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)