CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 51088 of 2017 [DB]

[Arising out of Order-in-Original No. UDZ-EXCUS-000-COM-0067-16-17 dated 16.11.2016 passed by the Commissioner of Customs, Udaipur]

Commissioner of Central Excise
& C.G.ST.- Udaipur **...Appellant**
142-B, Sector-11, Hiran Magri,
Udaipur, Rajasthan - 313001

VERSUS

M/s. Kota Trucks Pvt. Ltd. **...Respondent**
A-165, Ganganagar Motors,
Road No.5, IPIA, Jhalawar Road,
Kota, Rajasthan

APPEARANCE:
Shri S.K. Meena, Authorized Representative for the department
Ms. J. Kainaat, Advocate for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 27.03.2024
DATE OF DECISION: 27.03.2024

FINAL ORDER No. 55491/2024

DR. RACHNA GUPTA

Present order disposes of the appeal filed by the department to assail the Order-in-Original bearing No. 0067-16-17 dated 16.11.2016. The facts in brief relevant for the present purpose are as follows:

1.1 The respondent-asseessee are registered for providing the activity of 'Servicing of Motor Vehicle'. During the course of the audit of respondent's records, the department's audit party observed that the respondent has not been paying service tax on the value of spare parts used by them during the course of the activity rendered by them of servicing of motor vehicles. The appellant otherwise is an authorized motor vehicle dealer of TATA Motors and is simultaneously running the work shop for servicing of motor vehicles. With these observations, Show Cause Notice No. 1269 to 71 dated 17.06.2015 was served upon the respondent proposing the demand of service tax of Rs.1,20,78,700/- along with the interest and the proportionate penalties. The said proposal has been rejected vide the order under challenge. The proceedings initiated vide the aforementioned show cause notice against the asseessee-respondent as being dropped by the departmental adjudicating authority. The present appeal has been filed by the department pursuant to Review Order No. 04/2017 dated 06.02.2017.

2. We have heard Shri S.K. Meena, Authorized Representative for the department and Ms. J. Kainaat, learned Advocate for the respondent.

3. Learned counsel for the appellant has mentioned that the issue involved in the present appeal has already been decided in favour of the assessee. Decision in the case of **Automotive Manufactures Pvt. Ltd. Vs. Commr. of C.E. & C., Nagpur reported as 2015 (38) S.T.R. 1191 (Tri.-Mumbai)** has been passed dropping the demand against the respondent-assessee on the same issue. Learned Departmental Representative has acknowledged the same.

4. After hearing both the parties, we find that the issue is no more *res integra* as the same stands settled by another order of Division Bench of this Tribunal in the case of **Samtech Industries Vs. Commissioner of Central Excise reported as 2015 (38) S.T.R. 240 (Tri.-Del.),** wherein the assessee was providing the service of repairing transformer and was using consumables like transformer oil and also component parts being coil etc., the Tribunal held, in view of the fact that it is not disputed that in respect of the supply of goods, used for providing of service of repair, Sales Tax/VAT is paid, which fact is evident from the invoice on record. It was also observed that when the value of goods used is shown separately in the invoice and on the same Sales Tax/VAT has been paid, the supply of the goods would have to be treated as sale and the transaction which are sale cannot be a part of the service transaction. Accordingly, Service Tax is chargeable only on the services/labour charges and the value of the goods thereunder would not be includible in the assessable value. The Tribunal further observed that Rule 5(1) of Service Tax (Determination of Value) Rules, 2006 has been struck down as *ultra vires*, by the Hon'ble Delhi High Court in the case of **Intercontinental Consultants & Technocrats Pvt. Ltd. Vs. Union of India & Others reported as 2013 (29) S.T.R. 9 (Del.),** it is categorically held that the value of goods used for providing the services which have been shown separately in the invoice, on which Sales Tax/VAT has been paid, cannot be included in assessable value and no Service Tax can be charged on the same.

5. We further find that the decision of the Tribunal in the case of **Samtech Industries (supra)** has been upheld by the Hon'ble High Court of Allahabad reported as **2015 (38) S.T.R. J 434**. We further find that the Central Board of Excise and Customs vide their letter dated 27.09.2013 accepted the legal position and have not filed further appeal in this matter.

6. In view of the said decision, the demand of service tax against the respondent-assessee for the cost of goods supplied during repair/service on which the VAT liability has been discharged, does not appear to be sustainable. Accordingly, the demand confirmed along with interest as well as the penalty imposed as has been dropped by the original adjudicating authority is held justified. Resultantly, we do not find any infirmity in the said order. Order is hereby upheld. Consequent thereto, department's appeal is hereby dismissed.

[Dictated and pronounced in the open Court]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

HK