IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Appeal No. ST/1165-1166/2011 [SM]

[Arising out of Orders in Appeal No. IND/137 to 140/2011, dated 25.03.2011 passed by the Commissioner (Appeals), Central Excise & ST, Indore.]

For approval and signature:

Hon'ble Mr. V. Padmanabhan, Member (Technical)

M/s. Rukmaini Motors Pvt. Limited ….Appellant

vs.

CCE & ST, Indore ….Respondent

Appearance:

Shri B.K. Singh, Advocate for the Appellants
Shri M.R. Sharma, AR for the Respondent

CORAM:

Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing: 06.01.2017

FINAL ORDER NO. 50322-50323/2017-SM

Per V. Padmanabhan

The present two appeals are related to levy of service tax on the commission received by the appellant. The appellant is an authorized Service Station for Maruti Automobiles. They have also been facilitating sanction of loan to the customers for purchasing Maruti Cars from banks and other financial institutions. They have been receiving commission for facilitating such loans. Revenue was of the view that service tax is liable to be paid on the commission received by the appellant under the category of Business Auxiliary Services. In the impugned orders, the levy of service tax stands confirmed along with payment of interest as well as penalties under section 76, 77 and 78 of the Finance Act, 1994.

2. With the above background, heard Shri B.K. Singh ld. Advocate for the appellant and Shri M.R. Sharma for the Revenue.

3. Ld. Counsel submits that, with respect to Appeal No. ST/1165/2011, covering the period April 2004 to March 2006, the entire demand of service tax already stands paid along with interest. However, in respect of Appeal No. ST/1166/2011 which covers the period from April 2004 to March 2008, the Commissioner (Appeals) held that service tax to the extent of Rs. 1,48,282/- along with interest remains to be paid. He prays to set-aside the penalties imposed on them as well as for extending the benefit of cum-tax value as has been held in a number of case laws. He further submits that in respect of the second appeal (ST/1166/2011), there have been certain calculation mistakes which has resulted in adding certain figures twice and the demand needs to be reduced to that extent.

4. Ld. DR reiterates the findings of the authorities below.

5. Coming to Appeal No. ST/1165/2011, I find that the entire demand of service tax to the extent of Rs. 8,76,110/- has already been paid along with appropriate interest. However, in the second appeal (ST/1166/2011), the amount of Rs. 1,48,282/- is said to be outstanding along with interest. It has further been submitted that there are certain calculation error which needs to be corrected.

I note that there is no dispute that the activity for which the commission is received is liable for payment of service tax. The dispute pertains to the period 2004-2006. The Business Auxiliary Services was introduced as a new category of service with effect from 01.06.2003. The Business Auxiliary Services included in his ambit various types of services. There was uncertainty as to which service is included and which service is not covered. It appears that the appellant initially had doubts whether the activity would be liable for payment of service tax or not. Under such circumstances, I am of the view that this is a fit case for waiver of penalties under section 80 of the Finance Act, 1994.

6. In respect of Appeal No. ST/1166/201, as the appellant has pointed out certain discrepancies in the calculation, I consider it appropriate to remand the matter back to the Original Adjudicating Authority to re-calculate the demand, after taking into account any discrepancy in the calculation. The plea of cum-tax value raised by the appellant may also be considered in the light of the settled case laws on the subject. Additional evidences, if any may also be admitted as per law, if advised so.

7. Appeals disposed of in above terms.

[Dictated and pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

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