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

Service Tax Appeal No. ST/1522/2010-ST[DB]
[Arising out of Order-In-Appeal No. 16/MA/GGN/2010 dated 14.01.2010 passed by CCE (Appeals) Delhi-III]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

M/s. Alfa Automobiles ...Appellant

Vs.

C.S.T. Delhi-I …Respondent

Appearance:
Mr. Ramesh Krishnan (Advocate) for the Appellant
Mrs. Neha Garg, DR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing.25.01.2017
Date of Decision. 24. 05 .2017

Final Order No. 53414 /2017

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 14.01.2010 passed by the ld. Commissioner (Appeals), Central Excise, Delhi-III.

2. Brief facts of the case are that the appellant is authorised dealer for Maruti Udyog Ltd. (MUL) for sale of Maruti (Suzuki) range of cars. Maruti Finance is a unit of MUL, engaged in arranging loans for the customers for purchase of cars. Maruti Finance is having the arrangement with various financial institutions/banks for financing purchase of cars of MUL brand by providing car loans to various prospective buyers. For the said purpose, Maruti Finance gets some

commission from the Banks. In turn, Maruti Finance passes on portion of the commission received from the banks to the dealers (including the appellant herein), who sell cars to the customers. Maruti pays service tax on the full amount of commission received from the Banks under the category of Business Auxiliary Service. In this case, the Department confirmed the service tax demand against the appellant on the commission amount received by it from Maruti Finance under Business Auxiliary Service. The period of dispute involved in this case is from 01.07.2003 to 09.03.2004.

3. The ld. Advocate appearing for the appellant submitted that when Maruti Finance has paid service tax into the Government exchequer on the full value of commission received from the finance companies, on passing on some portion of such commission to the appellant, no further service tax is required to be paid again by the appellant. In this context, he has relied on the decision of the Tribunal in the case of Commissioner of Central Excise, Jaipur vs. Ajmer Automobile (P) Ltd. – 2012 (26) S.T.R. 19 (Tri.- Del.), Viral Builders vs. CCE 2011 (21) STR 457(Tri.), Sunil Hi Tech Engineers Ltd. V. CCE – 2010 – 17 STR – 121 (Tri.- Mumbai) and also the judgement of Hon'ble Chattisgarh High Court in the case of SEW Infrastructure Limited vs. CCE – 2015 – 37 – S.T.R. – 984 (Chatt.). The ld. Advocate further submitted that even after introduction of Cenvat Credit Rules, 2004, sub-contractor/sub-agent is not liable to pay service tax once again, as clarified in various circulars issued by the Board, which were withdrawn only by the master circular dated 23.08.2007. Thus, the ld. Advocate submitted that the appellant is not liable to pay service tax on the commission amount

received from Maruti Finance, since such commission has already suffered service tax.

4. On the other hand, the ld. D.R. appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. We find that on an identical issue, this Tribunal in the case of Ajmer Automobile (P) Ltd. (Supra) has held that since Maruti Udyog had already paid service tax on the commission amount received from finance companies, the appellant is not liable to pay service tax once again from part of such commission amount received by it from Maruti Udyog. Further, we also find that after introduction of Cenvat Credit Rules, 2004, the Tribunal in the case of Viral Builder (supra) and Sunil High Tech Engineers (Supra) has also held that since the tax has suffered on provision of service once, tax cannot be payable for same service twice.

7. In view of the above position of law, we do not find any merits in the impugned order. Accordingly, after setting aside the same, we allow the appeal in favour of the appellant.

(Pronounced in the open court on __24/05/2017_)

(**B. Ravichandran**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

Neha