IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING: 13/12/2017

Application No. ST/MISC/50942/2017
Appeal No. ST/3395/2012- [DB]

[Arising out of Order-in-Appeal No. - 20/STAX/APPL/DII/2011 dated 01/08/2012 passed by Commissioner of Central Excise-DELHI-II(Appeal)]

Auto Credits Appellant

Versus

CCE & ST, Delhi-ii Respondents

Appearance
Shri Murari Kumar, Advocate for the appellant.
Shri R.K. Majhi, AR for the Respondents.

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

Final Order No.__58396/2017_______

Per. S.K. Mohanty :-

1. With the consent of both sides, the appeal is taken up for hearing today, after disposing the miscellaneous application filed by the appellant.
2. Brief facts of the case are that the appellant is working as a Direct Sales Agent/Associate (DSA) of M/s HDFC Bank. Services provided by the appellant was categorized by the Department under Business Auxiliary Service and accordingly, proceedings were initiated for confirmation of the Service Tax demand. While adjudicating the matter, the Ld. Adjudicating Authority has considered the amounts

received from the HDFC Bank and ICICI Bank as the commission for the appellant and thus, confirmed the Service Tax demand of Rs. 34,64,990/- along with interest and also imposed penalties under various provisions of the Finance Act , 1994. The Ld. Commissioner (Appeals) has upheld the adjudication order. Hence, the appellant has filed the appeal before the Tribunal.

3. The Ld. Advocate for the appellant, at the outset, submits that the appellant did not provide any DSA service to ICICI Bank and did not receive any payment towards such service. He further submits that regarding non-receipt of the amount from the ICICI Bank, the appellant had approached both the Adjudicating Authority as well as the Commissioner (Appeals); However, ignoring the submissions, the authorities have confirmed the adjudged demand. He also submits that the appellant is not contesting the Service Tax demand confirmed on commission amount received by it from the HDFC Bank.

4. On the other hand, the Ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order.

5. Heard both sides and examined the case records.

6. We find that the appellant had specifically brought the fact to the notice of the both the Adjudicating Authority as well as Ld. Commissioner (Appeals) that it did not receive any payment for providing any service to ICICI Bank. However, ignoring the submissions of the appellant, the Service Tax demand was confirmed against it. Since the onus lies with the revenue to prove that the appellant had in fact received the payment for providing Business

Auxiliary Service to ICICI Bank, has not been satisfactorily discharged and the submissions made by the appellant were not considered in the proper prospective, we are of the view that the matter should go back to the Original Authority for a proper fact finding, whether the appellant received any payment from ICICI Bank for providing the taxable service.

7. Therefore, after setting aside the impugned order, we remand the matter to the Original Authority for a fresh fact finding in line with our above observations. Needless to say, that opportunity of personal hearing shall be granted to the appellant before deciding the issue afresh.

8. In the result, the appeal is allowed by way of remand.

(Order dictated and pronounced in open court.)

(B. Ravichandran)
Member (Technical)

S.K.Mohanty
Member (Judicial)

Rekha