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 : 08/11/2017.
DATE OF DECISION : 08/11/2017.

Service Tax Appeal No. 56657 of 2013

M/s Technoy Motors — Appellant

Versus

CCE & ST, Jaipur – II — Respondent

Service Tax Appeal No. 56779 of 2013

CCE & ST, Jaipur – II — Appellant

Versus

M/s Technoy Motors — Respondent

[Arising out of the Order-in-Appeal No. 19 (RDN)/ST/JPR-II/2013 dated 22/01/2013 passed by The Commissioner (Appeals), Central Excise & Customs, Jaipur.]

Appearance

Shri Jatin Mahajan, Advocate – for the appellant/respondent.

Shri R.K. Manjhi, Authorized Representative (DR) – for the Respondent/appellant.

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

Final Order No. 58778-58779/2017 Dated : 08/11/2017

Per. S.K. Mohanty :-

These appeals are directed against the impugned order dated 22/01/2013 passed by the Commissioner of Central Excise (Appeals), Jaipur.

2. Both the assessee as well as Revenue have preferred these appeals before the Tribunal. The assessee fairly concedes that the services provided by it to the individual customers for providing loans by various financial institutions fall under the category of Business Auxiliary Service. However, the assessee has contested the present demand on the ground of limitation, in as much as, period involved is from 2007-2008 and the show cause notice was issued on 23/11/2010, which is beyond the normal period prescribed under Section 73 of the Finance Act, 1994. So far as the appeal of Revenue is concerned, the grievance is that incentives received by the assessee from Maruti Udyog Ltd. should be considered as the taxable service under the category of Business Auxiliary Service and accordingly, dropping of the service tax demand by the Commissioner (Appeals) is not legally sustainable.

3. Heard both sides and perused the case records.

4. We find that in an identical situation, this Tribunal in the case of **South City Motors Ltd. vs. CST, Delhi – 2012 (25) S.T.R. 483 (Tri. – Del.)** has held that levy of service tax for providing loans to various customers was highly contentious and no malafides or suppression can be attributed and the demand

should be confined within the normal period of limitation. In this case, since the show cause notice was issued beyond the normal period provided under Section 73 ibid, we are of the considered view that the proceedings initiated by the Department are squarely barred by limitation of time and accordingly, the service tax demand confirmed against the assessee cannot be sustained on the ground of limitation.

5. With regard to the Revenue's appeal, we find that the Commissioner (Appeals) has recorded the following observations in the impugned order :-

> "5.3 I observe that for a commission agent, three ingredients are essential; first there should be a principal, secondly an agent who works for or on behalf of the principal, and thirdly a client. But in this case the respondent is an authorized dealer of the principal and it is a settled law that a dealership of the manufacturer is a relationship between principal to principal, and that any incentive received from principal to principal basis cannot be termed as commission as has been held by Supreme Court in the case of **Moped India Ltd. vs. CCE** reported at **1996 (1993) 23 E.L.T. 8**

6. Since, there is no involvement of any principal and agent relationship and essentially the transaction between the assessee and Maruti Suzuki are on principal to principal basis, with reference to sale of goods, such transaction cannot be termed as a service for the purpose of levy of service tax. Accordingly, we

do not find any merits in the appeal filed by the Revenue and accordingly the same is dismissed. Both the appeals are disposed of in the above terms.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

PK