

IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL,  
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT – IV

**Service Tax Appeal No. ST/51783/2018 [SM]**

[Arising out of Order-in-Appeal No. 116-CKJ-ST-UDR-2018 dated 21/03/2018 passed by the Commissioner of CGST & Central Excise, Jodhpur]

**Chandraudai Automobiles Pvt Ltd**

**...Appellant**

**Vs.**

**C.G.S.T., C.C. & C.E., Jodhpur – I**

**...Respondent**

Present for the Appellant : Mr. O.P. Agarwal, Advocate

Present for the Respondent: Mr. P.R. Gupta, AR

**Coram: HON'BLE MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)**

**Date of Hearing/Decision: 27.12.2018**

**FINAL ORDER No. 53477 / 2018**

**PER: ARCHANA WADHWA**

As per facts on record the appellant is an authorised service station registered with the Service Tax Department and was discharging its service tax liability on the value of the services so provided by them.

2. The dispute in the present Appeal relates to the Commission earned by the appellant from various financial institutions and insurance companies which the Revenue is of the view would fall under Business Auxiliary Services and would be liable to service tax. Accordingly, proceedings were initiated against the appellant by way of SCN dated 12.04.2013 raising demand of service tax of Rs. 5,15,295/- for the period 01.04.2007 to 30.09.2011. The same stands confirmed by the original adjudicating authority and upheld by Commissioner(Appeals). Hence, the present Appeal.

3. Ld. advocate appearing for the appellant is not disputing the taxability of the said commission under the category of Business Auxiliary Services and fairly agree that the issue stands decided against them by the Larger Bench decision of the Tribunal in the case of **Pagariaya Auto Centre Vs. CCE Aurangabad 2014 (33) STR 506 (Tri.-LB)**. However, he assails the demand on the point of limitation by submitting that during the relevant period there were various decisions of the Tribunal in favour of the assessee, thus leading to bonafide belief on their part. In such a scenario, the invocation of extended period cannot be appreciated. For the above proposition he relies upon Tribunal Final Order No. 56886/2017 dated 26.09.2017.

4. Ld. DR reiterates the findings of the Commissioner(Appeals) and submits that inasmuch as the appellant have already deposited the service tax in question, the same would amount to as if they have deemed to have accepted their liability. Accordingly, he prays for rejecting the Appeal.

5. I find no favour in the contention of the Ld DR. Merely because the appellant have deposited the amount in question their Appeal cannot be rejected on the said sole ground. The fact that the appellant has filed an Appeal challenging the Order of Commissioner(Appeals) itself goes to show that confirmation of demand is under challenge and has not been accepted by the assessee.

6. On merits, the assessee's case stands decided. As regards the limitation I find that Tribunal in the case of **KD Motors Vs. CCE & ST, Jaipur-II** has observed as under:

"5. We have heard both sides and perused the material available on record. We are considering first the question of limitation raised by the assessee-Appellants. Admittedly, there were conflicting decisions by the Tribunal in the cases involving similar set of facts. The matter was referred to the Larger Bench and the Larger Bench of the Tribunal in the case of **Pagariaya Auto Centre** (*supra*) held that the service tax liability is rightly confirmed in such situation. In the present case the demand is issued invoking extended period.

6. In view of the above facts involving interpretation of the law and varying decisions of the appellate body, we find that the demand for extended period cannot be justified. Accordingly, the present Appeal is allowed only on limitation by setting aside the impugned Order."

7. Admittedly, in the present case also the demand stands raised and confirmed by invoking the longer period. In view of the law declared in the above referred case extended period is not justifiably invocable in the present situation. Accordingly, I set aside the impugned order and allow the Appeal on the point of limitation itself.

[Dictated and pronounced in the open Court]

**(ARCHANA WADHWA)**  
**MEMBER (JUDICIAL)**

D.J.