CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

Date of Hearing/Decision:17/01/2019

ST/50436/2016-CU(DB)

[Arising out of Order-in-Appeal No.97/ST/DLH/2015 dated 30.12.2015 passed by the Commissioner (Appeals-I), Service Tax, Delhi]

M/s.Rohan Motors ….Appellant

Rep. by Shri B.L. Narsimhan and Shri Rachit Jain, Advocates for the appellant

VERSUS

CCE, Delhi-II …Respondent

Rep. by Shri Vivek Pandey and Shri Sanjay Jain, DRs for the respondent

CORAM : HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

Final Order No.50085/2019

PER ANIL CHOUDHARY:

The issue involved in this appeal is whether the appellant is liable to pay service tax on the activities of providing table space or services to financial companies /bank/institutions so as to facilitate loans to the prospective buyers of cars as the appellant is a dealer/retailer of cars and other automobiles.

2. The brief facts are that the appellant is an authorized dealer of M/s. Maruti Udyog Ltd. (MUL). The Appellant is in the business of purchasing cars from MUL and in turn selling them to the customers. Maruti Finance Ltd. (MF) is a wholly owned subsidiary of MUL, which entered into agreements involving loan arrangements with several banks and financial institutions with a view to expand the sale of its motor vehicles and to promote the services of banks and financial institutions in India. In this regard, MFL received commission from the Finance Companies and in turn it paid a portion of such commission to the authorized dealers such as the Appellant for providing the services on behalf of MFL to

Finance Companies. Further, MFL was paying service tax on the entire commission/remuneration received from Finance Companies for the period upto 10.09.2004.

3. Show cause notice dated 31.07.2007 was issued invoking extended period of limitation for the period July, 2003 to December, 2004 proposing to demand service tax of Rs.45,34,659/- along with interest and penalties were also proposed. The show cause notice was adjudicated by the impugned order dated 23.06.2014 and the same was further challenged before the ld. Commissioner (Appeals) and the Order-in-Original was affirmed by the order-in-appeal dated 30.12.2015.

4. Heard the parties.

5. We find that the issue herein was finally settled by the Larger Bench of this Tribunal in the case of **Pagariya Auto Centre Vs. CCE, Aurangabad – 2014 (2) TMI 98 – CESTAT, New Delhi (LB),** wherein it has been held that no uniform principle emerges as would guide determination of whether a particular transaction involving an interface between an automobile dealer and bank or financial institution would per se amount to BAS. The identification of the transaction and its appropriate classification as the taxable BAS or otherwise must clearly depend upon a careful analysis of the relevant transactional documents. Only such scrutiny and analysis would ensure rational classification of the transaction. It is further held that mere activity of providing space along with furniture for facilitating accommodation of representatives of financial institutions in the premises of an automobile dealer and consideration is received for that singular activity. Such consideration may perhaps constitute a rent for the provision of space and associated amenities. Such restricted relationship

/transaction may not amount to BAS. On the other hand, the transactional documents and other evidence on record indicates a substantial activity falling within the contours of any of the integers of the definition of BAS spelt out in Section 65(19) then it would be legitimate to conclude that BAS is provided.

6. We hold that the extended period of limitation is not applicable on the facts of the present case. We further note that the definition of "BAS" was substituted by Finance Act, 2004 w.e.f. 10.09.2004. The appellant has admittedly paid the service tax on the concerned activities w.e.f. 10.09.2004. Thus, there is no deliberate default on the part of the appellant and in this view of the matter, the extended period of limitation is not applicable.

7. Accordingly, we set aside the impugned order and allow the appeal. The appellant shall be entitled to consequential benefit, as per law.

(Dictated & pronounced in the open court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

Ckp.