IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH
COURT NO. I

Service Tax Appeal No. 58586 of 2013

[Arising out of the Order-in-Original No. 39/Commr/Mrt-I/2013 dated 31/03/2013 passed by The Commissioner of Central Excise, Meerut.]

M/s D.D. Motors **Appellant**
(a Division of D.D. Industries Ltd.),
918-221, Patel Nagar Industrial Area,
Dehradun (Uttarakhand).

VERSUS

The Commissioner of Central Excise, **Respondent**
Excise Chowk, University Road,
Mangal Pandey Nagar,
Meerut,
Uttar Pradesh – 250 005.

Appearance

Ms. Seema Jain, Advocate – for the appellant.

Shri G.R. Singh, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Justice Dilip Gupta, President**
Hon'ble Shri C.L. Mahar, Member (Technical)

Final Order No. 53587/2018 Dated : 06/11/2018

DATE OF HEARING/DECISION : 06/11/2018.

C.L. MAHAR :-

The brief facts of the matter are that the appellant are registered under the service tax as authorized service station for servicing and repairing of vehicles. For the service of the vehicles which are received by the appellant, the necessary technical inspection of engine, ignition, fuel systems, clutch and transmission, drive shafts, brakes wheels, suspension, electrical connections etc. are undertaken before the servicing of the vehicle and in case any part or equipment needs replacement, the appellant replaces the same in the course of servicing of the vehicle. During the course of the audit, it has been observed by the department that there is a difference between the value of receipts on account of incentive, sale of spare parts, commission and labour charges for service of vehicles shown by the appellant in their balance sheets for the financial year 2006-2007 to 2010-2011 then what has been deducted by them in their ST-3 returns filed before the department for the relevant financial years. After necessary enquiries, the department has reached to the following two conclusions that (i) that the appellant have received certain incentives from M/s Maruti Udyog Ltd. which have not been included in the taxable value by the appellant and same is taxable under the category of business auxiliary services; (ii) it has also been contended that appellant should have included the value of spare parts and components supplied during the course of the servicing of the vehicles in the taxable value for levy of the service tax. A show cause notice No. V (15) Off/Adj.-I/S Tax/89/2011 dated 2 October 2011 was issued to the appellant whereunder a service tax amount of Rs. 2,16,33,175/- has been demanded under Section 73 of the Finance Act, 1994, the penal provisions as provided under Section 76 and 77 has also been invoked and interest under Section 75 of Finance Act, 1994 has also been demanded. The learned Advocate appearing on behalf of the appellant has submitted that as per the declared policy of manufacturers of motor vehicles they are entitled for certain incentives, if they achieve a stipulated sales target of sale of vehicles. This incentive is announced by the manufacturers and circulated to the other dealers well in advance. The manufacturer of car namely M/s Maruti Udyog Ltd. provides various incentives in the form of the discounts on monthly basis or seasonal or festival basis. It has been the contention of learned Advocate that the incentive received by the appellant are in the nature of trade discounts based on the volume of transaction/sales achieved by them in a particular month or in a particular season and that the incentive is not for providing any service to the manufacture of the cars. The learned Advocate has cited various decisions of this Tribunal on the issue which are as follows :-

(i) **My Car Pvt. Ltd. versus Commissioner of Central Excise, Kanpur** reported in **2015 (40) S.T.R. 1018 (Tri. – Del.);**

(ii) **Commissioner of Service Tax, Mumbai – I versus Sai Service Station Ltd.** reported in **2014 (35) S.T.R. 625 (Tri. – Mumbai);** and

(iii) **Sharyu Motors versus Commissioner of Service Tax, Mumbai** reported in **2016 (43) S.T.R. 158 (Tri. – Mumbai)**.

2. On the issue of inclusion of the value of the spare parts, components replaced by the appellant while undertaking the servicing of various vehicles, it has been contended that the CBEC vide its Circular No. 96/7/2007-S.T. dated 28/08/2007 has categorically clarified that the service tax is not leviable on the transaction where the sale of spare part/component is involved in the servicing of the vehicle treating the same as sale of goods and subjected to levy of sales tax/VAT. The learned Advocate has also cited various decisions of this Tribunal, wherein it has been held that the value of spare parts sold by the service station while undertaking servicing of the vehicle and on which sales tax/VAT has separately been charged by the service provider from their customer, the value of same should not been included in the taxable value of service. The following decisions have been relied upon by the learned Advocate :-

(a) **Seva Automotive Pvt. Ltd. vs. Commissioner of Central Excise, Nagpur** reported in **2015 (37) S.T.R. 747 (Tri. – Mumbai);**

(b) **Tanya Automobiles (P) Ltd. vs. Commissioner of Central Excise & Service Tax, Meerut – I** reported in **2016 (43) S.T.R. 155 (Tri. – All.).**

3. We have also heard the learned Authorized Representative Shri G.R. Singh who has supported the findings of the order-in-original.

4. Having heard both the sides and after perusal of the record of the appeal, we find that the issues which are before us for consideration are as follows : (i) whether the incentive for

achieving the sales target can be considered as the commission for providing a business auxiliary service and can be subjected to service tax ; (ii) whether the value of the parts and spares supplied/used in the course of undertaking servicing of the vehicles need to be included in the taxable value under the category of 'Authorized Service Station'.

5. We find that so far as the first issue is concerned, the same is no longer res-integra as it has been decided by several decisions of this Tribunal specially in the appellant's own case in appeal No. 58585 of 2013 under the final order No. 50048 of 2017 dated 03/01/2017. It has been held that the incentive received by the appellant from M/s Maruti Udyog Ltd. for achieving certain sales target for a month or for a season is in the form of a trade discount and same cannot be considered as a service under the category of the business auxiliary service for the levy of service tax. The relevant extract of decision is reproduced here below :-

> "5. We have heard both the sides and perused appeal records. We find the dispute of service tax liability in the present case is only with reference to consideration received by the appellant and reflected in their balance sheet as "commission and incentives". We note that the commission received has been subjected to service tax as affirmed by the learned Counsel for the appellant and same has also been recorded in the show cause notice. Regarding incentive we note that the appellant did submit the communications received from the manufacturer (Maruti Udyog Limited) and also various Circulars issued by them. It is apparent that the appellants are receiving certain monetary incentive when they achieve a pre-determined sales target. We note that similar set of facts came up for consideration before the Tribunal and in the decisions cited (supra) it has been held that such target incentive which are more in the nature of trade discounts cannot be subjected to service tax under the category of Business Auxiliary Service. Following the decision of the Tribunal in these cases, we find the impugned order cannot be sustained. Accordingly, the same is set aside. The appeal is allowed".

6. Thus, on the question of whether the service tax is leviable on the amount of the incentive received by the appellant from M/s Maruti Udyog Ltd. for achieving certain sales targets, we hold that same is not taxable under the category of the business

auxiliary service as same being in the form of a trade discount received by the appellant from the supplier of vehicles.

7. With regard to the second issue, whether the value of parts and spares used by the appellant in the course of undertaking servicing of the vehicles need to form the part of taxable value or not. We find that here also the following decisions of this Tribunal are relevant which specifically covers the issue at hand : **Tanya Automobiles (P) Ltd. versus Commissioner of Central Excise & Service Tax, Meerut – I** reported in **2016 (43) S.T.R. 155 (Tri. – All.)**. The relevant extract of the above decision are reproduced here below :-

> "7. Heard learned DR, who supports the impugned order. On query from the Bench, as regards the matter has been settled in view of the Board's letter dated 27-9-2013, the learned DR submits that the Tribunal may pass appropriate order.
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> 8. Having considered the rival contentions and in view of the settled legal position in the case of *Samtech Industries* (supra), upholding the order of this Tribunal by the Hon'ble High Court of Allahabad and also in view of the letter of the C.B.E. & C. accepted the legal position that the cost of items supplied/sold and there is documentary proof specifically indicating value of the goods, the demand of Service Tax against the assessee for the cost of the goods supplied during repair does not appear sustainable. In this view of the matter, we set aside the impugned order and allow the appeal with consequential benefits.

8. Similarly, in the case of **Seva Automotive Pvt. Ltd. versus Commissioner of Central Excise, Nagpur** reported in **2015 (37) S.T.R. 747 (Tri. – Mumbai)**. The relevant extract of the above decision are reproduced here below _

> "4. After hearing both the sides, we find that the issue involved herein is identical to the cases decided by the Tribunal in the case of *Ketan Motors Ltd.* and *Sudarshan Motors* (cited supra). In those decisions, this Tribunal had held that the cost of spare parts sold during the rendering of service cannot form part of the transaction value. The Board's Circular dated 23-8-2007 also confirms the above position. Therefore, we remand the matter back to the adjudicating authority for consideration afresh of the contention of the appellant that the cost of spare parts sold cannot be included in the value of the services rendered. The appellant is also directed to submit all documents and evidences in support of their claim that they have discharged Sales Tax/VAT on the spare parts sold during the course of rendering the service.

> 5. Thus, the appeal is allowed by way of remand. The stay application is also disposed of.

9. In view of above, we hold that in principle the value of the spare parts and components used during the course of undertaking of servicing of vehicles is not includable in the taxable value for charging service tax. However, the fact whether the parts, spares and other components supplied by the appellant while undertaking the servicing of the vehicles has actually been subjected to payment of VAT or sales tax needs verification at the field level. Therefore, with regard to the demand of the service tax on the second issue, we hold that in principle, the value of spares, parts, components used while providing the servicing of the vehicles is not includable in the taxable value in the levy of the service tax, subject to that, no Cenvat credit has been availed all such parts, spares, components and the prevailing VAT/sales tax has been charged/paid from the recipient of the service. This fact needs verification at the field level and, therefore, we remand back the matter for denovo adjudication only with regard to the verification of this fact.

10. In view of above, we hold that the appeal is allowed on the first issue; on the second issue the matter is remanded back for denovo adjudication in view of our observations in the above para.

(Operative part of the order pronounced in open court.)

(Justice Dilip Gupta)
President

(C.L. Mahar)
Member (Technical)

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