CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH COURT NO.II

Service Tax Appeal No. 52750 of 2016(DB)

(Arising out of Order-in-Original No. ALW-EXCUS-O-I-O-COM-14-16-17 dated 14/06/2016 passed Commissioner of Central Excise and Service Tax-Alwar)

M/s T M Motors Pvt. Ltd. **Appellant**
B N Gate, Circular Road,
Bharatpur-321 001 (Raj.)

Versus

Commissioner of Central Excise
& Service Tax, Alwar **Respondent**
A-Block, Surya Nagar,
Alwar-301001(Raj.)

Appearance
Shri M B Maheshwari, Advocate for the appellant
Shri G R Singh, Authorized Representative for the respondent

CORAM:
Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Bijay Kumar, Member (Technical)

Date of Hearing/Decision: 07.05.2019

Final Order No: 50639/2019

Per Archana Wadhwa

1. After hearing both the sides, we find that the appellant is registered with the Service Tax Department for providing "Service of Motor Vehicle and "Business Auxiliary Services" demand of service tax stands confirmed against them but the period April, 2013 to September 2014 on the ground that the amounts received by them as

rebates/discounts/incentives are required to form part of the value of services. Further the Revenue has alleged that the cost of the inputs/spare parts/components used in providing services to the motor vehicles are to be included in the value of the such service and are liable to service tax. A part of the demand stands confirmed at the rate of 6 % of the value of trading done by them on the ground that trading is an exempted service and the appellant has availed the Cenvat Credit of duty paid on various inputs and input services.

2. As regards the first two issues learned Advocate has drawn our attention to recent Tribunal order in their own case reported as **TM Motors Pvt. Ltd. [2016 (96) Taxman.com 159 (Cestat-New Delhi)],** wherein it was held that the amounts received as rebate/discount/ incentives in price of car would not form part of the value and the cost of the various inputs/ parts etc., used in providing services, on which the appellant has paid the VAT, would not be liable to service tax.

3. As regards the confirmation of demand at the rate of 6 % of the taxable services, learned advocate submits that they have reversed the entire Cenvat Credit availed by them in which case the provisions of Rule 6 (3) of Cenvat Credit rules would not be invokable. However, it is seen that though the appellant had taken the above stand before the Adjudicating Authority but there is no finding by the Commissioner to that aspect. As such we are of view the

impugned orders are required to be set aside and matter remanded for fresh decision, after verification of the above stand of the appellant.

4. In as much as the appeal is being remanded, the Adjudicating Authority would also re-decide the two other issues afresh in the light of the law declared by the Tribunal in the appellant's own case. The appeal is thus allowed by way of remand.

(Dictated and pronounced in open court)

(Bijay Kumar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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