IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
EASTERN ZONAL BENCH: KOLKATA

S.T.Appeal No.01/08

(Arising out of Order-in-Appeal No.03/ST/B-I/2007 dated 30.08.2007 passed by the Commissioner of Central Excise, Cus. & Service Tax, Bhubaneswar)

M/s Rohan Autoriders Ltd.

Applicant (s)/Appellant (s)

Vs.

CCEx, Cus. & S.Tax, BBSR I

Respondent (s)

Appearance:

Shri C. R. Das, Advocate for the Appellants(s)
Shri K. Chowdhury, Supdt. (AR) for the Revenue

CORAM:

HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing : 31.10.2018
Date of Decision : 31.10.2018

ORDER NO…FO/A/76866/2018

Per Bench :

The present appeal challenges the Order-in-Appeal No.03/ST/B-I/2007 dated 30.08.2007.

2. The appellant is an authorized dealer for "Hero Honda" branded Motorcycles. The Department, during investigation, noticed that the appellant was receiving certain amounts from various Banks and Financial Institutions for arranging finance for their customers. The customers, who approached the appellant for purchase of the two wheelers, were provided finance for purchase of such vehicle through

the Bank and for such facilitation, commission was received by the appellant. Department was of the view that the commission amounts received were liable to payment of service tax under the category of Business Auxiliary Service (BAS) defined under Section 65(19) of the Finance Act, 1994. On these lines, show-cause notice was issued to the appellant and both the authorities below held that the service tax was liable to be paid under the category of BAS. An amount of Rs.88,828/- was confirmed. Service tax is for the period July, 2003 to March, 2005. The order of the Commissioner (Appeals) is under challenge in the present proceeding.

3. In this connection, we have heard Shri C.R.Das, ld.Advocate for the appellant and Shri K.Choudhary, ld.D.R. for the Revenue.

4. It was submitted on behalf of the appellant that the service tax has already been paid by the appellant along with applicable interest after issue of order-in-original. The ld.Advocate for the appellant further submitted that the demand of service tax is only contested on the ground of time-bar. He also submitted that no penalty is leviable on the appellant and the same may be waived.

5. The ld.D.R. for the Revenue justified the impugned order. He brought to our notice a sample dealer-agreement available in appeal record entered into by the appellant with M/s ICICI Bank. He submits that the terms of the agreement clearly mention that the appellant was required to promote the business of M/s ICICI Bank in the form of loan to the customers of the appellant for purchase of two wheelers.

6. Heard both sides and perused the records.

7. The facts of the case on record are that the appellant, who is a dealer of two wheelers, has facilitated various Banks including ICICI Bank in giving loan to the customers. For these activities, the appellant has received commission from the Banks and other Financial Institutions. It is seen from the sample agreement that the appellant, as representative of the Bank, was required to explain the financial scheme and facilities to the customers and facilitation depends in giving loan to the customers. We are of the view that this activity is to be classified under BAS for payment of service tax. Accordingly, we uphold the liability for service tax.

8. The order has been challenged by the appellant mainly on time barred. It is seen that the fact of providing such services to Banks and Financial Institutions, was detected by the Revenue in view of the report of investigation. Hence, we are of the view that the Revenue was fully justified in invoking extending period for demand of service tax under Section 73 of the Finance Act, 1994.

9. In view of the facts and circumstances of the case and keeping in view the fact that the service tax liability has already been discharged along with interest, we consider this to be a fit case for waiver of penalty by taking recourse to Section 80 of the Finance Act, 1994.

10. In the result, appeal is partly allowed.

(Dictated and pronounced in the open court)

Sd/	Sd/
(P.K.Choudhary)	**(V.Padmanabhan)**
Member (Judicial)	**Member (Technical)**

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