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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 94 of 2012

(Arising out of Order-in-Appeal No. 72/JSR/2011 dated 16.12.2011 passed by the Commissioner (Appeals), Central Excise & Service Tax, 605, Mahabir Tower, Main Road, Ranchi – 834 001)

M/s. Jayshree Motors Private Limited **: Appellant**
Plot No. IP, Adityapur Industrial Estate,
Saraikela, Jamshedpur – 832 109

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
143, New Baradwari, Sakchi,
Jamshedpur – 831 001

APPEARANCE:

Shri R.S. Bajaj, Consultant for the Appellant

Shri J. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75417 / 2024

DATE OF HEARING / DECISION: 01.03.2024

Order : [Per Shri K. Anpazhakan]

The present appeal has been filed against the impugned Order-in-Appeal No. 72/JSR/2011 dated 16.12.2011 passed by the Commissioner (Appeals), wherein the Ld. Commissioner (Appeals) has upheld the demands of service tax along with interest and penalty confirmed by the adjudicating authority.

2. The demand of service tax confirmed in the impugned order can be classified under the following categories tabulated below:

a) Finance Sub-vention Receipts and Insurance Commission involving tax liability of Rs. 1,56,892/- alongwith educ. cess thereon of Rs. 3,138/-. This demand was settled by the appellant on their own immediately after adjudication by considering the said receipts as cum-tax receipts.

b) Sales Promotion Expenses and Sales Commission booked as expenses involving service tax demand of Rs. 1,24,288/- and educ. cess of Rs. 2,485/-.

c) Current Assets in the form of balances of different claims receivable involving tax demand of Rs. 22,775/- and educ. cess of Rs. 456/-.

d) Misc. Receipts (Others) comprising mainly sundry left over sums from amount received for facilitating registration involving service tax demand of Rs. 3,592/- and educ. cess of Rs. 72/-.

3. The facts of the case are that the appellant is an Authorised Dealer of an automobile manufacturer viz. M/s. Ford India(P) Ltd. (FIPL). The appellant has entered into an agreement with M/s FIPL to deal in the company's products viz. the motor cars as per the said company's marketing as well as special promotional schemes. Accordingly, the appellant purchased the vehicles from the manufacturer on outright basis and sold them in their own right. Thus, the Appellant contended that the relationship between FIPL and them was that of a buyer and

seller and the dealings between them were on principal-to-principal basis. As per company's marketing as well as special promotional scheme introduced from time to time through Dealer Confidential Bulletins (DCB), the appellant had extended the buyer related incentives to the ultimate customer and sought reimbursement of the same from FIPL. The appellant had settled the tax liability on the commission received from banks and insurance companies and accounted the same in their books of account. The department considered that the appellant has not paid service tax on some of the amounts received by them and accordingly issued Show Cause Notice demanding service tax on the same. The Notice was adjudicated and both the lower authorities confirmed the service tax as mentioned in paragraph 2 (*supra*) along with interest and penalty.

4. Among the demands mentioned in paragraph 2 (*supra*), the Appellant submits that they have accepted their liability and settled the demand mentioned at (a) above on their own immediately after adjudication, by considering the said receipts as cum-tax receipts. Thus, there is no dispute on this demand in this appeal.

4.1. Regarding the demand mentioned at (b) in paragraph 2 above, the demands have been confirmed on the Sales Commissions and Sales Promotion Expenses. These are expenses and not income as evident from the extracts of ledger accounts and extracts of audited financial statements. As there is no consideration received for any service provided by the appellant, the said amount falls out of the service tax net and no tax can be levied on the same.

4.2. Regarding the demands confirmed mentioned at (c) in paragraph 2 *(supra)*, the Appellant submits that they were Current Assets in the form of balances of different claims receivable. The reimbursement claims which remained outstanding at the year-end were carried forward to next year as current assets, which is apparent from extracts of ledger accounts. The year-end balances in Finance Sub-vention Claims and Exchange Claims ledger accounts were brought forward to next year as Current Assets. The lower authorities have confirmed the demand of service tax on the said balance of current assets, which is not sustainable.

4.3. The demand confirmed at (d) in paragraph 2 above pertains to Miscellaneous Receipts comprising mainly sundry left over sums from amount received for facilitating registration. They are not related to any service rendered accordingly, there is no liability of service tax on the same.

4.4. In view of the above submission, the Appellant prayed for setting aside the demands confirmed in the impugned order and allowing their appeal.

5. The Ld. Authorized Representative appearing on behalf of the respondent reiterated the findings in the impugned order.

6. Heard both sides and perused the appeal documents.

7. We observe that out of the four categories of demands confirmed in the impugned order, the appellant has admitted their liability and the tax liability on Finance Sub-vention receipts had already been settled by the appellant, by considering the said receipts as cum-tax receipts. We accept the receipts as inclusive of tax as the appellant has not

collected service tax separately from the customers. Accordingly, we hold that the appellant has rightly paid service tax on the demand mentioned at (a) in paragraph 2.

7.1. Regarding the demand at (b) in paragraph 2 above, we observe that the Sales Commissions and Sales Promotion Expenses are not income. It is evident from the extracts of ledger accounts and extracts of audited financial statements submitted by the appellant that they were expenses. Thus, we hold that they are not consideration received towards rendering of any service. As there is no consideration received for any service provided by the appellant, the said amount falls out of the service tax net and no service tax can be levied on the same. Accordingly, we set aside the service tax demand confirmed on this count.

7.2. Regarding the demands confirmed mentioned at (c) in paragraph 2 of this Order, we observe that they were Current Assets in the form of balances of different claims receivable. The reimbursement claims which remained outstanding at the year-end were carried forward to next year as current assets, which is apparent from extracts of ledger accounts. At no stretch of imagination the said assets can be construed as consideration received by the appellant towards rendering of any taxable service. Hence, the demand of service tax on this count is not sustainable and accordingly, we set aside the same.

7.3. Regarding the demand confirmed at (d) in paragraph 2 (*supra*), we observe that the Miscellaneous Receipts comprising mainly sundry left-over sums from the amount received for facilitating registration. We observe that the sundry receipts are not related to any service rendered.

Accordingly, we hold that there is no liability of service tax on the same and accordingly, we set aside the same.

8. In view of the above discussion, we hold that except the demand confirmed at (a) in paragraph 2 of this Order, other demands confirmed in the impugned order are not sustainable, accordingly, we set aside the same. In respect of the demand confirmed at (a) also, the appellant has admitted their liability and paid the tax immediately after the adjudication order was passed, by considering the said receipts as cum-tax receipts. Accordingly, we hold that there was no suppression of fact with intention to evade payment of tax established in this case. Hence, no penalty is imposable.

9. In view of the above discussion, we set aside the demands confirmed along with interest at (b), (c) and (d) in paragraph 2 (*supra*). The demand confirmed along with interest at (a) in paragraph 2 is upheld. No penalty imposable. The appeal filed by the appellant is disposed on the above terms.

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

Sd/-	Sd/-
(K. ANPAZHAKAN)	**(ASHOK JINDAL)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

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