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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 249 of 2011

(Arising out of Order-in-Original No. 13/S.Tax/Commr/2011 dated 06.04.2011 passed by the Commissioner, Central Excise & Service Tax 143, New Baradwari, Sakchi, Jamshedpur 831001)

M/s. Tata Motors Limited, Jamshedpur **: Appellant**
Mr. Dhanu Kumar
AGM (Finance) Finance Division Jamshedpur 831010

VERSUS

Commissioner of Central Excise, Jamshedpur **: Respondent**
143, New Baradwari Jamshedpur

APPEARANCE:

Shri Rahul Tangri, Advocate for the Appellant
Assistd by Ms. Ekta Jhunjhunwala, Advocate

Shri K. Chaudhuri, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.76041/2024

DATE OF HEARING / DECISION: 22.05.2024

Order: [PER SHRI ASHOK JINDAL]

The appellant has filed this appeal against the impugned order, wherein demand of service tax has been confirmed under the category of business support service' for the period from 01.05.2006 to 09.05.2008, wherein the Show Cause Notice was issued on 14.09.2010 by invoking the extended period of limitation.

2. The facts of the case are that the appellant viz. M/s. Tata Motors Limited, Jamshedpur (hereinafter referred to as the 'Appellant') is, *inter alia,* engaged in the manufacture of various models of chassis/ motor vehicles in medium and heavy segment for commercial application. The Appellant initially had separate divisions for manufacturing axles, gear boxes and excavator machines which were used for manufacture of final products. The Appellant had made a township in the area thereby providing house, roads, electric, water, medical facilities, etc. (herein-after referred to as 'common costs') to its employees which were also enjoyed by all the divisions operating under the Appellant.

2.1. Due to strategic reasons, the Appellant hived off the said divisions thereby creating three separate companies namely, HV Axles Limited ('HVAL'), HV Transmissions Limited ('HVTL') and Telco Construction Equipment Company Limited ('Telcon'). Even after hiving off, the said common costs were incurred by the Appellant and benefits arising out of the said common costs were continued to be enjoyed by HVAL, HVTL and Telcon, pursuant to separate agreements entered with each of the Company.

2.2. In terms of the agreements so entered, the actual costs w.r.t. creche, education, sports, medical and health, legal services, housekeeping, water supply, compressor house, common stationery items, factory maintenance, etc. were agreed to be apportioned with HVAL, HVTL and Telcon on the basis of number of employees, turnover, compressed air consumption, actual water consumption, floor area, etc. Accordingly, invoice was being raised by the Appellant on HVAL, HVTL and Telcon on monthly basis for recovery of the said costs, which was settled by book adjustment as well as payment through bank.

3. Meanwhile, an investigation was initiated by DGCEI on HVAL, wherein vide letter dated 03.09.2007; HVAL was asked to provide clarification on the nature of services received from the Appellant, along with the amount of service tax charged by the Appellant on the same (if any) and the method adopted for valuation of such service, as per the Annual Report of the Appellant for FY 2006-07.

3.1. HVAL, vide letter dated 03.10.2007, explained the entire transaction against which amount was being paid to the Appellant, along with its view that it is not chargeable to service tax, subsequent to which no further enquiry was made on this matter.

4. However, on the basis of internal call and certain verbal queries raised by the Department pursuant to the aforesaid investigation at the end of HVAL, w.e.f. 10.05.2008, the Appellant, in order to avoid litigation, started payment of service tax on such cost sharing arrangement by treating the same as 'business support service' ("**BSS**") and intimated the Department about the same vide letter dated 06.01.2009. The Department initiated summons proceedings vide letter dated 16.03.2009 enquiring about the common cost apportionment. Multiple enquiries were made and communications exchanged between the Appellant and the Department pursuant to such summon proceedings.

4.1. Subsequently, on 14.09.2010, a Show Cause Notice was issued to the Appellant proposing to demand service tax on the sharing of common cost under BSS. The Appellant furnished a detailed reply to the show cause notice vide letter dated 25.11.2010. Being dissatisfied with the Appellant's submissions, the demand proposed vide the Show Cause Notice dated 14.09.2010 was confirmed vide the impugned order.

5. The Ld. Counsel for the appellant submits that in this case appellant is sharing common cost between appellant HVAL, HVTL and Telcon; the sharing of the cost is not taxable as business support service, in the light of the decision of this Tribunal in the case of *Reliance ADA Group Pvt. Ltd. vs. Commissioner of Service Tax, Mumbai -IV, 2016 (43) S.T.R. 372, (Tri.- Mumbai)*. It is contended that as before 01.05.2011, the words "*operational assistance for marketing*" were there, which was replaced as "*operational or administrative assistance in any manner*"; that as the words 'in any manner' are absent, therefore, for the period prior to 01.05.2011, the appellant is not liable to pay service tax.

5.1. It is his submission that it is a case of revenue neutrality as if the appellant pays service tax, the appellant's own unit would be entitled to take CENVAT Credit of the same.

5.2. Further, it is submitted by the Ld. Counsel for the appellant that extended period of limitation is not invokable in the facts and circumstances of this case.

7. On the other hand, Learned Authorized Representative for the Revenue supported the impugned order.

8. Heard the parties.

9. We find that during the impugned period, the definition of 'business support service' was as under:-

> *"(104c) "support services of business or commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing."*

9.1. The activity undertaken by the appellant is for managing transportation of personnel, importation costs, crèche, education, sports, medical and health, legal services, housekeeping, water supply, time-keeping, HR management, town planning service, rural and community development, audit, quality control services, compressor house, common stationery items, factory maintenance, etc., does not fall under the category of 'business support service' prior to 01.05.2011 as the words "operational assistance for marketing" was replaced as "operational or administrative assistance in any manner". The same view was taken by this Tribunal in the case of *Reliance ADA Group Pvt. Ltd. (supra)* wherein it was observed as under: -

> "5.5 It is therefore clear that common services are not 'provided' by the appellant but, only these are only 'procured' by the appellant from the Service Providers. Costs thereof are shared by the recipient Participating Group Companies by making reimbursements to the Appellant. The Appellant merely carries out the agency function of procurement of services for the Participating Group Companies which share the costs and expenses thereon.
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> 5.6 We find that the reimbursements of the cost/expenses incurred by the Appellant cannot be regarded as consideration flowing to the Appellant towards the taxable service provided by the Appellant rather the receipts are towards the reimbursements of the cost/expenses incurred by the Appellant in terms of the cost sharing agreement with the Participating Group Companies.
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> 5.10 We find that the definition of 'Business Support Services' covers only specific activities in its inclusive part of the definition. Only if such specific activities are carried out, it would be classifiable as 'Business Support Services'. The Appellant *per se* in its own capacity has not provided any of the specified services to the Participating Group Companies. The attempt of the adjudicating authority to link all the activities of the Appellant with the marketing policies, customer evaluation procurement policies, distribution policies, customer relation policies, taxation policies, etc., and also considering the appellant as a Service Provider, appears to be for anyhow bringing the same in the definition of 'taxable serves', which exercise is only on assumptions, without any documentary evidence, and contrary to the findings recorded in earlier part of the same impugned Order (in Para 4.3 thereof).
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> 5.13 There is no dispute on the fact that w.e.f. 1-5-2011, the words '*operational assistance for marketing*" earlier appearing in Clause (104c) of Section 65 were substituted with "*operational or administrative assistance in any manner*', to enhance the scope of the definition of "*support services of business or commerce*". This amendment is only prospective in operation. Therefore, in any event, prior to 1-5-2011 any such assistance by the appellant cannot be within the scope of the definition of "*support services of business or commerce*", and consequently, neither any such assistance was a "taxable service" within the scope of Section 65(105) under sub-clause (zzzq), nor was any person providing such assistance was falling within the term "service provider" under Section 65(105).
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> 5.17 As has been discussed above, the Appellant has procured various services which have been

used by the Participating Group Companies either individually or collectively. The expenditure incurred in procuring such services is then allocated to the concerned Group Company/Companies in a pre-determined ratio and are subsequently recovered by the Appellant. The amount so recovered by the Appellant are only towards the actual amounts payable by the Appellant to the third party vendors or Service providers. The Appellant has not recovered any amount over and above the actual expenses incurred by it in facilitating the provision of common services to its Participating Group Companies. The Appellant has made the payment to the third party vendors or service provider for procurement of specified services on behalf of the Participating Group Companies. The services so procured by the Appellant has been used or availed by the Participating Group Companies. Having used the services Participating Group Companies in law would be liable to make the payment directly for such services to third party vendors or service providers, however, for convenience such payment has been routed through the Appellant under the pass through mechanism. The Participating Group Companies have authorized the Appellant to procure the services. Such authorization has been executed in the form of contractual agreement between the Appellant and Participating Group Companies. Participating Group Companies are completely aware of the fact that the services are procured from the third party vendors or services providers and the Appellant is only facilitating the provision of such Services. The invoice issued by the Appellant categorically specifies that the Appellant recovers only the amount that is being paid to the third party on behalf of the Participating Group Companies. The amount recovered by the Appellant from the Participating Group Companies is precisely the same as has been paid by the Appellant to the third party vendors/service providers. The goods or services procured by the Appellant for the use of Participating Group Companies are not availed by the Appellant for its own use or consumption, and the Appellant has no function or existence other than as Trustee/Manager (agent) of the Participating Group Companies cost sharing arrangement. We therefore, find no bones in observing that the Appellant completely satisfies the conditions of a 'Pure Agent' as set out in Rule 5(2) of the Valuation Rules.

5.18 In *Pharmalinks Agency (I) Pvt. Ltd.* v. *CCE,* 2015 (37) S.T.R. 305, the Tribunal in the matter of a clearing and forwarding agent, who was receiving reimbursement towards freight charges under a separate agreement from the service recipient, held that the assessee is acting as a Pure Agent by making the payment of expenses subsequently taking the reimbursement of the same from the service recipient. Therefore, in the instant case the amount so recovered by the Appellant is in the capacity of a Pure Agent and thus the same cannot be subjected to the Service tax.

5.19 In Para 4.23, the adjudicating authority erroneously holds that despite repeatedly being asked for the production of the invoices for the support of the claim of Cenvat credit, the Appellant failed to submit any invoice. A letter dated 20-3-2015, a certificate of Chartered Accountant was submitted providing the details of the Cenvat credit available during the periods from 2006-07 and 2007-08 amounting to Rs. 20,97,962/- and Rs. 3,58,24,163/- respectively. In the certificate, the Chartered Accountant had clearly mentioned the details of suppliers and particulars of payment of principal amount together with the Service tax. The letter also states that the Appellant could produce the invoices for examination if the Respondent wished to verify the same. This CA Certificate submitted by the Appellant detailing the Cenvat credit otherwise available to the Appellant is not even noticed in the impugned Order. The Appellant had duly submitted all the invoices under the cover of letter dated 7-52015, and a copy of the CA Certificate along with the details of Cenvat credit otherwise available during the relevant period has been produced before us.

5.20 The impugned Order erroneously invokes **extended period** for demanding Service Tax for the financial years 2006-07 to 2007-08. It is seen that even if the activities carried out by the Appellant are subjected to Service tax, the Participating Group Companies who were duly registered with the Service tax authorities during the relevant period and were discharging Service tax on their activities, would be entitled to avail the Cenvat credit thereof. Copies of the Service Tax Return (ST-3) filed by the Participating Group Companies namely Reliance Communication & Infrastructure Limited, Reliance Energy Limited, Reliance Capital Limited, Reliance Communications Limited and Reliance Telecom Limited for the financial years 2006-07 and 2007-08 were submitted by the appellant in the adjudication proceedings. The adjudicating authority has also categorically accepted the position of **revenue neutral**ity and recorded the relevant findings at Para 4.26 of the impugned Order as under:-

> "4.26 I find that this is a case where Support Services for Business and Commerce was introduced in 2006 and *at the initial period, the assessee might not have paid the Service Tax on the understanding that sharing of expenses may not be covered in the definition of 'business support service'. Infact, there is no clear mention of such 'sharing of expenses' in the definition or in the instruction issued by the Board.* I also find that there are number of judgments of Tribunal which has held that at the time of levy of any new services if there are interpretational issue, for that purpose the person should not be penalized. Judgments are also there that wherever there is a question of interpretation of law, the assessee should not be penalized. I also find that *it is a case of **revenue neutral**ity* because the service tax paid by the assessee was available as Cenvat credit to the group companies who were also paying service tax. *Therefore, there could not have been any intention on the part of the assessee not to pay the service tax*........"

9.2. In view of this, we hold that, prior to 01.05.2011, the cost sharing basis services obtained by the appellant for themselves and their group companies, do not fall under the category of "business support service". Therefore, on merit, no service tax is payable.

10. We further take note of the fact that whatever service tax is paid by the appellant, the same is entitled as CENVAT Credit by their group companies. Therefore, it will be termed as "service has been provided to self". In these circumstances, it is a revenue neutral situation and therefore, no service tax is payable the appellant.

11. Further we find that the period involved in this matter is from 01.05.2006 to 09.05.2008 and the appellant has explained why they are not liable to pay service tax, on 03.10.2007, and no proceedings were initiated against the appellant; only Show Cause Notice has been issued on 14.09.2010 by invoking extended period limitation. We therefore hold that the same is barred by limitation. Accordingly, we hold that on limitation also, the appellant succeeds.

12. In view of this, we hold that the impugned order does not have any merit. Accordingly, same is set aside.

13. In result, appeal is allowed with consequential relief, if any.

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

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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