CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.405

Service Tax Appeal No. 87398 of 2015

(Arising out of Order-in-Appeal No. PUN-SVTAX-000-APP-127-15-16 dated 14/10/2015 passed by the Commissioner of Service Tax (Appeals), Pune)

M/s Bajaj Finance Ltd. ....Appellant
4th Floor Bajaj Fiserv Corporate 41A ICE House
Sasson Raod Opp Wadia College Pune
Pin Code 411 001

VERSUS

Commissioner of Service Tax, Pune ....Respondent
Commissioner of Service Tax-I Pune
ICE House 41/A Sasson Road
Pune Pin Code- 411001

APPERANCE:

Shri Makrand Joshi, Advocate for the Appellant
Shri Onil Shivdikar, Asst. Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86548 / 2019

Date of Hearing: 10.06.2019
Date of Decision: 10.06.2019

PER: AJAY SHARMA

This Appeal has been filed by the Appellant, assailing the order dated 14/10/2015 passed by the Commissioner of Service Tax (Appeals), Pune in Order-in-Appeal No. PUN-SVTAX-000-APP-127-15-16.

2. The facts of the matter in brief are as follows. The Appeals are engaged in providing taxable services of "Banking and Financial

Services", "Insurance Auxiliary Services" etc. They are mainly engaged in the business of lending i.e. extending loans for purchase of "Motor Cycle and Commercial Vehicles". If a customer fails to repay the loan, initially the Appellants used to issue a notice to such defaulting customer and if the customer fails to pay even after repeated reminders, the Appellants repossess the vehicle after following legal procedure. They have outsourced the activity of repossession of vehicles to a third-party Agency/Service Provider. Such third-party Agencies recover the vehicle from the defaulting customers and recover the charges for the services from the Appellant alongwith service tax thereon. The Appellants from time to time are availing Cenvat credit on service tax paid by such third party agencies on the activity of recovery of vehicle from the defaulting customers. Audit was conducted by the Central Excise Department and it was observed by them that the Appellants are availing Cenvat credit of the service tax paid on services including the activity of "seizing charges" levied by the recovery agency for repossession of the vehicles of defaulting customers. According to them, the Appellants being finance company and engaged in services relating to lending of finance, the benefit of Cenvat credit is not available to the Appellants for the said services of repossession of vehicles. During the period from April, 2012 to March, 2013, the Appellants had availed Cenvat credit of Rs. 25,58,840/- on such services. Accordingly, a statement of demand dated 26/08/2013 was issued to the Appellants for recovery of the aforesaid amount of Rs. 23,58,840/- alongwith interest and penalty. The said statement of demand was adjudicated vide Order-in-Original dated 28/01/2015 by which the recovery of the aforesaid amount was upheld alongwith interest and penalty. On Appeal filed by the Appellant, the learned Commissioner vide impugned order dated 14/10/2015 upheld the order passed by the lower authority.

3. We have heard learned Counsel for the Appellant and learned Authorised Representative for the Revenue and perused the records. Learned Authorised Representative reiterated the findings recorded in the impugned order and prayed for dismissal of Appeal. We have been informed by the learned Counsel for the Appellant that an identical issue covering the earlier period i.e. April, 2007 to March, 2012 was raised by the department and ultimately the same was decided in favour of the Appellant by this Tribunal vide order dated 02/11/2017 in Appeal No. ST/88910/2013 titled as *M/s. Bajaj Finance Ltd.* vs. *Commissioner of Central Excise, Pune-I* by which this Tribunal has held that the Appellant are entitled for the Cenvat credit on the service of repossession of vehicle provided by the various recovery agent to the Appellant against the output service of the Appellant i.e. lending of money. The copy of the aforesaid order was also placed on record by the ld. Counsel for the Appellant. We have gone through the same and the relevant paragraph of the said order are reproduced as under

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> *4. We have carefully considered the submissions made by both sides. We find that the appellant’s output services i.e. lending of money to the borrower who are the customer of vehicles and the loan is given for purchase of the vehicle which*

is to be repaid back by the customer to the appellant as per the schedule decided under mutual agreement. The appellant have availed cenvat credit on the repossession charges charged by the recovery agent to the appellants, repossession of vehicle was carried out by the recovery agent in connection with the recovery of the overdue loan amount. In our view the lending service is not limited to disbursing the loan but it includes the recovery of the said lended money which is one of the vital part of the overall activity of lending of money. Therefore the service received for taking repossession of the vehicle by recovery agent is an input service which is used for the service of lending. The definition of input service under Rule 2(1) of Cenvat Credit Rules, 2004 as under:

> *"2(1) "Input Service" means any service,-*
>
> *(i) used by a provider of taxable service for providing an output service, or*
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> *(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factor or premises, advertisement or sales promotion, market research storage upto the place of removal, procurement of inputs, activities relating to business such as accounting, auditing financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"*

From the above definition it can be seen that any service used for providing output service is an input service. As discussed *above, the service of taking repossession of the vehicle which is an activity in relation to recovery of the loan is used for overall service of lending. Therefore as per the main part of the definition, the service of recovery agent received by the appellant is an input service. The appellant also claimed that his service is related to 'Security' which is specified in the inclusion part of the definition as one of the input service. We find that the vehicle on which the appellant have given the loan is hypothecated with the appellant as the security. Therefore in connection to the recovery of the loan this vehicle is taken under repossession, therefore this service is clearly covered under the definition of 'Security' which means " a thing deposit or pledged as a guarantee of the fulfilment of an undertaking or the repayment of the loan, to be forfeited in case of default". In view of this definition the service of taking repossession of the vehicle from the borrower is a part of security service which is specifically included in the definition of input service. For this reason also the service of repossession provided by the recovery agent to the appellant is an input service. Therefore the appellant is clearly entitled for the Cenvat credit on such input service. However it is observed from the submission of the Ld. Counsel that the amount of recovery charges was recovered by the appellant from the individual borrowers at the time of giving repossession of the vehicle in case the borrower has repaid the amount. In this regard the proceedings related to demand of service tax on such part is pending before this Tribunal. Since that is not a subject matter of the proceedings of the present case, the same cannot be taken into consideration for deciding the issue on merit involved in the present case. However, the Revenue is free to take appropriate action in accordance with law, if it is found that against the credit of input service i.e. seizing charges if any exempted service is provided. As per our above discussion, the appellant is entitled for the Cenvat credit on the service of repossession of vehicle provided by the various recovery agent to the appellant against the output service of the appellant i.e. lending of money (Banking and Other Financial Service), accordingly the impugned order is set aside. The appeal is allowed.*

4. No contrary view of the Hon'ble Supreme Court or High Court or any other Bench of the Tribunal has been brought to our notice. After going through the aforesaid order we are in complete agreement with the view taken by the Tribunal and did not find any reason to take a different view. Since on an identical issue between the same parties, this Tribunal has taken a view therefore in order to maintain consistency, we are inclined to allow the Appeal filed by the Appellants and the same is hereby allowed with consequential relief, if any.

(Order pronounced in the open Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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