IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

Appeal No. ST/87683/2018

(Arising out of Order-in-Appeal No. NGP-1/Appl/82/2017-18 dated 20.03.2018 passed by Commissioner of CGST & Central Excise (Appeals), Nagpur)

Automotive Manufacturers Pvt. Ltd., **Appellant**

Vs.

Commissioner of Cus., CE & ST Aurangabad **Respondent**

Appearance:

Shri Puloma Dalal, Consultant for appellant
Shri S.K. Hatangadi, Asst. Commr (AR) for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing & Decision : 25.01.2019

FINAL ORDER NO. **A/86676 / 2019**

Per: S.K. Mohanty

Confirmation of Cenvat demand along with interest and imposition of penalty on the appellant is the subject matter of present dispute.

2. Learned Consultant appearing for the appellant, at the outset, submits that the proceedings initiated by the department are *ab initio* void inasmuch as the appellant is engaged in providing taxable service and as such, is governed under the service tax statute; whereas the show-cause notice dated 30.11.2015 was issued by the department, seeking for recovery of the amount under Section 11A(4) of the Central Excise Act, 1944 read with Rule 6 (3), Rule 14 of the Cenvat Credit Rules,

2004. It has further been contended that the said show-cause notice had proposed for imposition of penalty under Section 11AC of the Act read with Rule 15 of the Rules. She also contended that based on the proposals made in the show-cause notice, the original authority had confirmed the proposed demand and the learned Commissioner (Appeals) has also upheld the adjudication order. Thus, it is the submission of the learned Consultant that since Section 83 of the Finance Act, 1994 has not considered the provisions of Section 11A and 11AC of the Central Excise Act, 1944 for the purpose of service tax matters, the impugned order upholding the adjudged demands confirmed under a different statute cannot be sustained.

3. On the other hand, learned D.R appearing for Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. I find that the show-cause notice dated 30.11.2015 was issued by the department, seeking for recovery of the amount under Section 11A(4) of the Act and for imposition of penalty under Section 11AC of the Act. The case is not under dispute that the appellant is a service tax registered assessee and the issue pertains to availment of common input services for providing both taxable as well as exempted services. In view of the fact that the appellant is a service tax registered assessee, provisions of the Finance Act, 1994 are only applicable for confirmation of the service tax demand. However, I find that the department has entirely proceeded on the basis of Central Excise Act for confirmation of the adjudged demand. Section 83 of the Finance Act provides that for the purpose of the said Act, certain provisions of Central Excise Act, 1944 should be considered. The said Section 83 of the Act nowhere specifies that the provisions of Section 11A, 11AA and 11AC should be adopted for the

purpose of the Finance Act, 1994. Thus, I am of the considered view that the department has entirely proceeded on the wrong premise in support of confirmation of the adjudged demand.

6. Therefore, the impugned order passed by the learned Commissioner (Appeals) is liable to be set aside only on the ground of jurisdiction and adoption of wrong statutory provisions. Accordingly, after setting aside the same, the appeal is allowed in favour of the appellant.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

nsk