CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH – COURT NO. 3

Service Tax Appeal No: 87573 of 2015

[Arising out of Order-in-Appeal No: PUN-EXCUS-001-APP-0063-15-16 dated 7th September 2015 passed by the Commissioner of Central Excise (Appeals), Pune – I.]

Sehgal Autoriders Pvt Ltd … ***Appellant***
D-II, 64/6 MIDC, Telco-Chinchwad Road,
Chinchwad, Pune – 411 019

versus

Commissioner of Central Excise …***Respondent***
Pune – I
41-A, ICE House, Sasoon Road, Pune – 411 001

APPEARANCE:

Ms Chandani Tanna, Advocate for the appellant

Shri SB Mane, Assistant Commissioner (AR) for the respondent

With

Service Tax Appeal No: 85139 of 2016

[Arising out of Order-in-Appeal No: PUN-EXCUS-001-APP-0107-15-16 & PUN-EXCUS-001-APP-0108-15-16 dated 19th October 2015 passed by the Commissioner of Central Excise (Appeals), Pune – I.]

Gems Automobiles (P) Ltd … ***Appellant***
Plot No.92, Block No. D-III, Mumbai – Pune Road,
Chinchwad, Pune – 411 019

versus

Commissioner of Central Excise …***Respondent***
Pune – I,
41-A, ICE House, Sasoon Road, Pune – 411 001

APPEARANCE:

Ms Padmavati Patil, Advocate for the appellant

Shri SB Mane, Assistant Commissioner (AR) for the respondent

And

Service Tax Appeal No: 85088 of 2016

[Arising out of Order-in-Appeal No: PUN-EXCUS-001-APP-0107-15-16 & PUN-EXCUS-001-APP-0108-15-16 dated 19th October 2015 passed by the Commissioner of Central Excise (Appeals), Pune – I.]

Kundan Cars Pvt Ltd … ***Appellant***
GP No.172, Thermax Chowk, MIDC
Chinchwad, Pune – 411 019

Versus

Commissioner of Central Excise ***…Respondent***
Pune – I,
41-A, ICE House, Sasoon Road, Pune – 411 001

APPEARANCE:

Shri Makrand Joshi, Advocate for the appellant

Shri SB Mane, Assistant Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: A/86523-86525/2019

DATE OF HEARING: 17/07/2019
DATE OF DECISION: 17/07/2019

PER: C J MATHEW

The issue in these appeals, against order-in-appeal no. PUN-EXCUS-001-APP-0063-15-16 dated 7th September 2015 and order-in-appeal no. PUN-EXCUS-001-APP-0107-15-16 & PUN-EXCUS-001-APP-0108-15-16 dated 19th October 2015 of Commissioner of Central

Excise (Appeals), Pune – I, pertains to the leviability of tax as provider of 'support service of business or commerce', as defined in section 65(104c) of Finance Act, 1994, on the charges collected by appellants for getting the vehicles sold by them registered under the Motor Vehicles Rules and obtaining of smart card and similar documents for the buyers.

2. Learned Counsel for the appellant submits that the issue is covered by the decision of the Tribunal in *Kundan Cars Pvt Ltd v. Commissioner of Central Excise, Pune – I [2017-TIOL-2860-CESTAT-MUM]* which has relied upon the decision of the Tribunal in *Wonder Cars Pvt Ltd v. Commissioner of Central Excise, Pune – I [2016-TIOL-190-CESTAT-MUM].*

3. Learned Authorised Representative reiterates the findings of the lower authorities.

4. On perusal of the order in *re Kundan Cars Pvt Ltd* it is seen that the Tribunal records that

> *'4. We have carefully considered the submissions made by both sides. We find, the facts in the present case is that the appellant apart from the sale of cars had provided certain services such as RTO registration of the cars on behalf of the customer of car and also provided some incidental services such as handling charges which include providing Number Plate of the car etc. We find that the identical issue has been*

decided by the Tribunal in the case of Wonder Cars Pvt. Ltd. (supra) wherein Tribunal passed the following order:-

> *"3. The issue involved in this appeal is regarding the service tax liability on the appellant under the category of "Business Support Services".*
>
> *4. It is seen from the records that the appellant herein is authorized dealer of Maruti Cars. The appellant is also receiving an amount from their customers who purchase cars from them, an amount which is RTO registration charges, Smart Card Fees, Vehicle Registration Fees and other extra charges. It is the case of the Revenue that these extra charges collected by the appellant are taxable under the category of Business Support Services except for actual RTO registration charges. The first appellate authority has recorded the findings that the appellant by extending these services rendered to build a strong supportive relationship with people and more so with the customers get covered under the category of Business Support Services and covered directly in relation to their main business of sales of cars.*
>
> *5. We find that the findings recorded by the lower authorities are incorrect as the definition of Business Support Services as per section 65(104c) of the Finance Act reads 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 fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, [operational or administrative assistance in any manner], formulation of customer service and pricing policies, infrastructural support services and other transaction processing.*
>>
>> *Explanation. - For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security;"*
>
> *It can be seen from the above reproduced definition that the said definition covers services which are rendered as indicated therein. In the case in hand, the amount collected as extra charges is not for any of the services which are enumerated in the said definition. The first appellate authority has stated that appellant is a rendering customer relationship services which in our view is incorrect as the definition talks about an entity rendering customer relationship management services and not the customer*

> *relationship by the appellant himself. In our view the definition of 'Business Support Services' will not cover the services rendered by the appellant even in the residual category of "other transaction processing".*
>
> *6. In view of the foregoing, we hold that the impugned order is unsustainable and liable to be set aside and we do so. The impugned order is set aside and the appeal is allowed with consequential relief, if any."*

From the above decision of this Tribunal, it can be seen that RTO registration charges i.e Smart card fees, vehicle registration fees and other extra charges was held not to be under "Business Support Service", accordingly the demand was dropped. We also observe from the fact that the appellant directly providing the miscellaneous services to customer of the car support service of business and commerce services provided for commercial/business organisation in relation to business or commerce. In the present case, the customer of car is not a business entity so called business service to the customer of cars is not in relation to business of commerce of the customer of cars.

Therefore service in question is not covered under "Business Support Service". As per above discussion and following the ratio in the case of Wonder Cars Pvt. Ltd. (supra) the impugned order is not sustainable and same is set aside and the appeal is allowed.'

5. Respectfully following the above decision, we set aside the impugned order and allow the appeals.

(Pronounced in open court)

(C J Mathew)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

**/as250729073008*