CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 85987 of 2018

(Arising out of Order-in-Original No. PUN-EXCUS-001-COM-004 to 005/17-18 dated 31.10.2017 passed by the Commissioner of Central Excise and Goods & Service Tax, Pune-I)

M/s Sai Service Pvt. Ltd. **.... Appellant**
Mumbai-Pune Road, Fugewadi,
Dapodi, Pune – 411 012

Versus

Commissioner of Central Excise & GST, Pune-I **.... Respondent**
GST Bhawan, 41-A, Sassoon Road,
Opp. Wadia College, Pune – 411 001

WITH

Service Tax Appeal No. 85685 of 2019

(Arising out of Order-in-Original No. PUN-EXCUS-001-COM-20/18-19 dated 15.11.2018 passed by the Commissioner of Central Excise and Goods & Service Tax, Pune-I)

M/s Sai Service Pvt. Ltd. **.... Appellant**
Mumbai-Pune Road, Fugewadi,
Dapodi, Pune – 411 012

Versus

Commissioner of Central Excise & GST, Pune-I **.... Respondent**
GST Bhawan, 41-A, Sassoon Road,
Opp. Wadia College, Pune – 411 001

AND

Service Tax Appeal No. 85481 of 2020

(Arising out of Order-in-Original No. PUN-EXCUS-001-COM-005/19-20 dated 30.12.2019 passed by the Commissioner of Central Excise and Goods & Service Tax, Pune-I)

M/s Sai Service Pvt. Ltd. **.... Appellant**
Mumbai-Pune Road, Fugewadi,
Dapodi, Pune – 411 012

Versus

Commissioner of Central Excise & GST, Pune-I **.... Respondent**
GST Bhawan, 41-A, Sassoon Road,
Opp. Wadia College, Pune – 411 001

Appearance:

Ms. Puloma Dalal, Advocate for the Appellant
Shri Piyush Bade, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86995-86997/2023

Date of Hearing: 09.10.2023
Date of Decision: 09.10.2023

Per: S.K. Mohanty

Briefly stated, the facts of the case are that the appellants M/s Sai Service Private Limited are engaged in providing the taxable services under the category of 'Business Auxiliary Services' and 'Servicing of Motor Vehicles' and for that purpose, got themselves centrally registered in respect of the main place business and the branches located at various places in the country. The appellants are also the authorized dealer of M/s Maruti Suzuki India Limited (MSIL) for sale and service of the four-wheeled vehicles. During the disputed period, the appellants had received incentives from M/s MSIL towards the volume of cars sold by them. Since the appellants did not discharge the service tax liability on such amount of incentives received by them, investigation was initiated by the department against them. During the course of investigation, the department had recorded the statements of various executives of the appellants' company and upon perusal of records/documents maintained by the appellants, had concluded that the appellants are required to discharge the service tax liability under the taxable category of 'Business Auxiliary Service'. The various Show Cause Notices issued by the department, seeking confirmation of the service tax demand were adjudicated upon by the learned Commissioner, Central Excise and Goods & Service Tax, Pune-I vide Orders-in-Original No. PUN-EXCUS-001-COM-004 to 005/17-18 dated 31.10.2017, PUN-EXCUS-001-COM-20/18-19 dated 15.11.2018 and PUN-EXCUS-001-COM-005/19-20 dated 30.12.2019 (herein after, referred to as 'the impugned orders'). In the impugned orders, the learned adjudicating authority has held that receipt of incentives/ consideration by the appellants for marketing and sale of MSIL's vehicles/spares should be considered as "Service *and* Declared Service" in terms of Section

65B(44) read with Section 65B(22), further read with Section 66E(e) of the Finance Act, 1994 and 'taxable service' in terms of Section 65B(51) *ibid* (w.e.f. 01.07.2012). Accordingly, the impugned orders have confirmed the service tax demands along with interest and also imposed penalties as proposed in the SCNs issued by the department. However, the impugned order dropped the proposals made in the show-cause notice in respect of the period to 01.07.2012. Feeling aggrieved of the impugned orders, the appellants have preferred these appeals before the Tribunal.

2. Heard both sides and perused the records of the case.

3. We have examined the dealership agreements entered into between M/s MSIL and the appellants during different periods. The said agreements in categoric terms have stated that M/s MSIL would sell the vehicles and spare parts thereof on principal-to-principal basis to the appellants. Further, we have also perused the sample copy of the invoices issued by M/s MSIL to the appellants and also invoices issued by the appellants to different parties towards sale of the vehicles. Both the category of invoices have reflected payment of Value Added Tax (VAT)/Central Sales Tax (CST) on the transactions made between them. It is evident that the relationship between the appellants and M/s MSIL is not that of principal and agent; rather as per unambiguous terms of the agreements, the relationship is of principal-to-principal basis.

4. The Tribunal in appellant's own case had allowed the appeal for the period July, 2003 to March, 2008, vide Order dated 16.04.2013, reported in 2013-TIOL-1436-CESTAT-MUM. The Tribunal had held that incentives earned for sale of vehicles of M/s MSIL's make would be treated as the 'trade discount'. In interpreting the contents in the said order of the Tribunal, the original authority in the impugned orders has held that the amount earned by the appellants cannot be considered as genuine trade discount and that such amount offered by M/s MSIL does not confirm to the requirement of trade discount, as it is a conditional one, subject to achieving certain sales targets. By placing reliance on the decision of the Tribunal (supra), though the original authority has accepted that the incentives earned should not

be subjected to levy of service tax, prior to the period 01.07.2012, but has held that for the period post 01.07.2012, the ratio of the decision of the Tribunal shall not be applicable. The reasons assigned for such conclusion by the original authority are that after introduction of 'taxable service' and 'declared service' under the Negative List regime, the activities undertaken by the appellants should fit into the provisions of 'taxable service'. However, in support of such conclusion, the original authority has not specifically discussed as to how, and under what circumstances, the case of the appellants vis-à-vis the statutory provisions are contextually different for both the periods, attracting consideration of such activity as 'service' for payment of service tax for the period post 01.07.2012. In other words, when the situation remains the same, the original authority has opined that no service tax is payable for the period prior to 01.07.2012 and simultaneously he has held that liability can be fastened post such amended date i.e., 01.07.2012.

5. It is an admitted fact on record that the appellants had earned the incentives on achieving the sales turnover of the vehicles. The said fact has also been admitted by the original authority at paragraph 19.2 in the impugned order dated 31.10.2017, wherein he had held that such incentives were offered by M/s MSIL to the appellants for achieving certain sales targets. The modus operandi adopted by the appellants for making transaction with M/s MSIL remain the same all along, before the amendment of service tax statue prior to 01.07.2012 and the period subsequent thereto under the 'negative list' regime. Thus, in our considered view, for the similar set of facts, views cannot be changed to hold that no service tax is leviable for the prior period and liability can be fastened with effect from 01.07.2012 under the negative list.

6. In the present case, since there is no element of service involved in the transactions between the appellants and M/s MSIL, it cannot be said that there is provision of taxable service, for the purpose of levy of service tax. We have also perused the periodic VAT returns filed by the appellants together with the audited Profit & Loss account and the Balance-Sheet. It transpires from the said statutory records that the appellants have reflected the particulars of total sales

of vehicles and profit earned towards such transactions. The fact is also not under dispute that the appropriate authorities under the VAT statue have accepted the transaction particulars reflected by the appellants in the records as 'sale of goods'. Since, the statutory records maintained by the appellants and the terms of the agreements are manifestly clear that the transactions are on principal-to-principal basis, we do not find any logic for acceptance of the position that the disputed transactions should be considered as 'service' for payment of service tax thereon inasmuch as the transaction is a Pure Sale transaction, involving sale and purchase of goods and no element of service involved therein. Therefore, we are of the considered view that the ratio of the decision of the Tribunal (supra), would be applicable for non-payment of service tax for the transactions made by the appellants post 01.07.2012.

7. In view of the foregoing discussions and analysis, we do not find any merits in the impugned orders, insofar as the impugned adjudged demands were confirmed on the appellants, holding the transactions as 'service'. Therefore, the impugned orders are set-aside and the appeals are allowed in favour of the appellants.

(Operative portion of the order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha