CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 85352 of 2017`

(Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-569-16-17 dated 25.11.2016 passed by the Commissioner (Appeals), Service Tax-II, Mumbai)

M/s Mahindra & Mahindra Ltd. **.... Appellant**
Akurli Road, Kandivali (East),
Mumbai – 400 101

Versus

Commissioner of Service Tax-II, Mumbai **.... Respondent**
4th Floor, New Central Excise Building,
Maharshi Karve Road, Churchgate,
Mumbai – 400 020

Appearance:

Shri Abhishek Chhabra, Company Represntative for the Appellant

Shri S.B.P. Sinha, 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/86098/2024

Date of Hearing: 01.10.2024

Date of Decision: 01.10.2024

PER: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants herein are engaged in the manufacture of tractors falling under Chapter 87 of the Central Excise Tariff Act, 1985. For undertaking such manufacturing activities, the appellants during the disputed period 2006-07, had procured certain services from the overseas entities. Since the service providers were residing abroad, the appellants were liable to pay Service Tax in terms of Section 66A of the Finance Act, 1994 under Reverse Charge Mechanism (RCM). Since the appellants had disputed the Service Tax liability as a recipient of service from the overseas entity, proceedings were initiated by the Department for confirmation of the Service Tax demand. The show-cause notice, in this regard, was adjudicated by the original authority vide order dated 30.09.2012, wherein Service Tax demand of Rs.4,91,055/- was confirmed alongwith interest and also penalties were imposed under Sections 77 and 78 *ibid*. On appeal against the said adjudication order dated 30.09.2012, the learned Commissioner (Appeals) vide the impugned order dated 25.11.2016 has upheld the said order and rejected the appeal filed by the appellants. Feeling aggrieved with the impugned order dated 25.11.2016, the appellants have preferred this appeal before the Tribunal.

2. Heard both sides and examined the case records.

3. The appellants have contended that the Service Tax demand confirmed by both the authorities below under "Business Auxiliary Service" cannot be sustained. They have submitted that the appellants had received the service from a legal consultancy firm located abroad, and such service being brought under the tax net for the first time, by way of insertion of Section 65(105)(zzzzm) *ibid* w.e.f. 01.09.2009, the service received by them for the period 2006-07 should not be liable for payment of Service Tax. On perusal of the case records, more particularly, the adjudication as well as the impugned order, we find that such plea made by the appellants have not been considered and addressed to by the authorities. Therefore, we are of the view that the matter should go back to the original authority for the proper fact finding with regard to the nature of services actually received by the appellants and whether, as a recipient of service, were they liable to pay service tax under the RCM?

4. In view of the above, the impugned order is set aside and the appeal is allowed by way of remand to the original authority for passing of *de novo*

adjudication order with regard to the nature of services received by the appellants from the overseas service provider(s) and determination of appropriate classification, for the purpose of levy of Service Tax thereon. Needless to say that opportunity of personal hearing should be granted to the appellants before deciding the issue afresh.

5. In the result, the appeal is allowed by way of remand.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha