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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 1

SERVICE TAX Appeal No. 53344 of 2015

(Arising out of Order–in-Original No. 21/COMMR/DDN/2015 dated 18.06.2015 passed by Commissioner of Custom and Central Excise- Dehradun)

M/s. Rohan Motors Limited **...Appellant**
130/1, Chakrata Road, Yamuna Colony,
Dehradun- 248001 (Uttarakhand)

Versus

Commissioner of Central Excise, Dehradun **....Respondent**

APPEARANCE:

Mr. B.L.Narasimhan and Ms. Neha Choudhary, Advocates for the Appellant
Mr. Arun Thaplial, Authorised Representative for the Respondent

CORAM : HON'BLE MR.JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

Date of Hearing/ Decision: 05.10.2020

FINAL ORDER No.: 51620/2020

JUSTICE DILIP GUPTA

The order dated June 18, 2015 passed by the Commissioner of Central Excise, Dehradun[1] confirming a portion of the demand of service tax with penalty and interest has been assailed. The Commissioner has dropped certain demands of Rs.35,45,636/-.

2. The appellant is a dealer of Maruti Udhyog Ltd.[2]. The appellant buys vehicles from MUL for further sale to the buyers by

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1. the Commissioner
2. MUL

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virtue of a dealership agreement dated January 1, 2013 entered into between Maruti Suzuki India Ltd. and the appellant. Under the said agreement, the appellant receives discount from MUL, which are referred to as "incentives" under the schemes. The Department has sought to levy service tax on the incentives received by the appellant under the category of "business auxiliary service"[3].

3. The demand has been confirmed on the following:

(i) The incentive amount received by the appellant under BAS.

(ii) The registration and number plate charges received by the appellant from the customers for registration of the vehicles with the Regional Transport Authority under BAS;

(iii) The miscellaneous income in the nature of penalty on bouncing of cheques and processing charges under BAS; and

(iv) Transportation charges paid by the appellant under "goods transport agency" services[4].

4. The show cause notice dated May 9, 2014 is for the period April 2012 to March 2013. The total demand confirmed under BAS is Rs.24,91,202/-, while that under GTA is Rs.35,117/-. The demand has been confirmed with interest under section 75 of the Finance Act 1994[5] and penalty under section 78 of the Finance Act.

5. It would be pertinent to state here that for the previous period from 2007-08 to 2011-12, a show cause notice dated

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3. BAS
4. GTA
5. the Finance Act

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October 9, 2012 was issued to the appellant on the same issues. The demand was confirmed by order dated November 7, 2013 but this order was set aside by the Tribunal on June 29, 2018 **(Rohan Motors Ltd.** vs. **CCE, Meerut-I)[6].**

6. Shri B.L. Narasimhan learned appearing for the appellant made the following submissions;

(i) The demand is not sustainable as obsolete provisions have been invoked;

(ii) service tax is not leviable on incentives;

(iii) The same issue regarding leviability of service tax on the incentives received by vehicle dealers from vehicle manufacturers, apart from being settled by decisions of the Tribunal, also came up for consideration in matters of other similarly placed dealers, wherein demand was set aside by Commissioner/ Commissioner (Appeals);

(iv) In the appellant's own case, for the subsequent period from October, 2013 to March, 2015, the Joint Commissioner, Central Excise, Dehradun dropped the demand by order dated March 23, 2017;

(v) In the case of the appellant for previous period from 2007-08 to 2011-12, the demand was set aside by the Tribunal by decision dated June 29, 2018;

(vi) The demand of service tax on miscellaneous Income and registration and number plate charges is not sustainable; and

(vii) The demand of service tax on freight expenses under GTA is not sustainable.

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6. 2018 (7) TMI 29-CESTAT New Delhi

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7. Learned Authorized Representative of the department has, however, supported the impugned order and also placed reliance on an advance ruling dated March 14, 2019 passed by the Appellate Authority for Advance Ruling, Maharashtra in the matter of **M/s Bajaj Finance Ltd[7].** to contend that the cheque bouncing charges would attract service tax.

8. The submissions advanced by learned Counsel for the appellant and Shri Arun Thapliyal, learned Authorized Representative of the Department have been considered.

9. The first issue that arises for consideration is whether service tax would be leviable on incentives prior to July, 2012.

10. As noticed above, the appellant purchases vehicles from MUL and sells the same to the buyers. It is clear from the agreement that the appellant works on a principal to principal basis and not as an agent of MUL. This is for the reason that the agreement itself provides that the appellant has to undertake certain sales promotion activities as well. The carrying out of such activities by the appellant is for the mutual benefit of the business of the appellant as well as the business of MUL. The amount of incentives received on such account cannot, therefore, be treated as consideration for any service. The incentives received by the appellant cannot, therefore, be leviable to service tax.

11. In this connection, reference needs to be made to the decision of the Tribunal in **Rohan Motors Ltd.**, which is a case

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7. 2019(8) TMI 116

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relating to the appellant, but for a period prior to July, 2012. The Tribunal observed as follows:

> "As per the agreement with MUL, the appellant has received various incentives/ discounts / bonus etc. from MUL from time to time. The income received under these heads was accounted by the appellant in their books of accounts as "miscellaneous income". During the course of audit of the books of accounts of the appellant, the Department noticed such Misc. income and took the view that such amounts received by the appellant from MUL are consideration towards promotion and marketing of the vehicles manufactured by MUL and such consideration is liable for payment of Service Tax under the category of Business Auxiliary Service. By taking the above view, show cause notice dated 17.10.2011 was issued covering the period 01.04.2006 to 31.03.2011. Further, show cause notice dated 09.10.2012 was issued covering the period 01.04.2007 to 31.03.2012. The proceedings initiated under the above show cause notices resulted in the issue of two impugned orders, which are under challenge in the present appeals. Since the issue involved is common, these appeals are disposing of with this common order.
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> 3. The demands have been raised by Revenue through the two impugned orders covering overlapping periods. Demand has been made under the category of Business Auxiliary Service for the amounts received by the appellant from M/s. MUL. Such amounts have been received towards incentives/discounts in connection with the sale of the vehicles manufactured by MUL. In addition, certain amounts have also been received by the appellant towards Registration/ Number Plate etc. to facilitate the buyers of vehicles. All the above amounts have been charged under BAS. Certain amount of Service Tax has also been demanded under the category of GTA in respect of freight paid by the appellant towards transport of vehicles from their dealership to the customers' premises."

12. The Tribunal placed reliance on an earlier decision of the Tribunal in **Tyota Lakozy Auto Pvt. Ltd.**[8] and observed.

> "4. From a perusal of various case laws relied by the appellant, we note that the discounts/incentives received by the appellant from MUL cannot be made liable for payment of Service Tax under BAS, since the appellant is purchasing the cars from MUL on principal to principal basis and subsequently, reselling the same.
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> 5. Revenue has ordered for payment of Service Tax under various receipts recorded under miscellaneous income.

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8. **2017 (52) STR 299 (Tri.- Mumbai)**

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> These include loading/unloading charges, Pollution Check-up charges, penalty-cum processing charges etc. It is obvious that these amounts have been received not towards provision of any service on behalf of MUL or anybody else. Consequently, there is no justification for levying Service Tax under BAS.
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> 6. In miscellaneous income, commission amounts received from ICICI have also been included. This commission has been received for provision of furniture to ICICI for facilitation of accommodating representatives in the premises of the appellant for selling insurance policies for cars. Such an activity cannot be considered under BAS as has been held by the Larger Bench in the case of Pagadiya Auto Centre (supra). Consequently, we set aside the demand of Service Tax on such commission received.
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> 7. A portion of the demand also has been raised under the category of GTA. The appellant has paid the freight expenses in connection with transportation of Cars to their customers. However, they have not issued any consignment notes which are necessary to identify the appellant as a goods transport agency. As per the views expressed by the Tribunal in the case of South Eastern Coal Fields Ltd. (supra), in the absence of consignment notes, the activity of the appellant cannot be classified under GTA service. Consequently, we set aside the demand under GTA service."

13. The same view was taken by the Tribunal in **Commissioner of Service Tax, Mumbai-I** Vs. **Sai Service Station Ltd.**[9]

14. In regard to the period post July, 2012, reliance has been placed by the learned Counsel for the appellant on an order dated March 23, 2017 passed by the Joint Commissioner, Central Excise in the matter of **M/s Rohan Motors Ltd.** The period involved was from October, 2013 to March, 2014 and 2014-15. The Joint Commissioner, after placing reliance upon the decision of the Tribunal in **Sai Service Station Ltd.**, observed as follows:

> "I also find that the ratio of the aforesaid case of CCE, Mumbai-I Vs. Sai Service Station is squarely applicable to the facts of the present case and hold that no service tax can be demanded on the incentive which was in form of trade discounts, extended to the party in terms of a declared policy for achieving sales target. Accordingly, I find that the demand of service tax raised on this count is unsustainable. Thus demand of interest under section 75 of the Act is also no sustainable."

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9. 2013(10) TMI 1155-CESTAT Mumbai

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15. The Department, in the present cannot be permitted to take a different view. The service tax on the amount received form incentives could not, therefore, have been levied to service tax.

16. What needs to be noted is that the Commissioner, in the impugned order, while rejecting the contention of the appellant that there was no consideration received by the appellant for the incentives, even went to the extent of stating that he differed from the finding of the Tribunal. The relevant observations of the Commissioner are as follows:

> "In this context, with due respect I differ from Hon'ble Tribunal findings as the decision was based on circular issued by MUL whereas there is not mention of such incentives in their agreement which is the bible for execution of the said agreement. The circulars issued by MUL in respect of incentives is nothing but to cover up the payments made for promotion or marketing of the goods produced/manufactured by M/s MUL."

17. In fact, the Commissioner, after differing from the decision of the Tribunal, went on to place reliance upon an interim order passed by the Tribunal in **M/s Automotive Manufacturers (P) Ltd.**

18. The Commissioner was bound by the decision of the Tribunal and he could not have differed from the decision of the Tribunal. The adjudicating authority needs to be reminded of the decision of the Supreme Court in **Union of India** Vs. **Kamlakshi Finance Corporation Ltd.**[10]

> "The Supreme Court noticed that the order passed by the Assistant Collector not only ignored the order of the Collector (Appeals) remanding the matter, but also distinguished the decision of the Tribunal by observing that the decision of the Tribunal had not been agreed to by the Department as an Appeal had been filed in the

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10 1991 (55) ELT 433 (SC)

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Supreme Court. The assessee filed a writ petition in the Bombay High Court to challenge the said order of the Assistant Collector. The High Court not only quashed the order passed by the Assistant Collector but also directed the Department to allocate the matter to a competent officer for passing a proper order. It is against this decision of the Bombay High Court that the Union of India preferred an Appeal before the Supreme Court. The Supreme Court observed as follows:-

> The High Court has, in our view, rightly criticized this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasized that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. **The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate** authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not acceptable to the department - in itself an objectionable phrase - and is the subject-matter of an appeal **can furnish no ground for not following** it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws. "

(emphasis supplied)

19. The demand of service tax in respect of the amount collected on account of bouncing of cheques and cancellation of orders is also not sustainable. These amount are penal in nature and not towards consideration for any service. In this connection reliance can be placed on the decisions of the Tribunal in **M/s Jaipur Jewellery Show** Vs. **C.C.E & S.T. Jaipur**[11] and **M/s K. N. Food Industries Pvt. Ltd.** Vs. **The Commissioner of CGST & Central Excise, Kanpur**[12]**.**

20. The issue relating to demand of service tax on income earned by the appellant from registration charges and number

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11. 2016(12) TMI 344 – CESTAT New Delhi
12. 2019-TIOL-3651-CESTAT-ALL

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plate charges under BAS and freight expenses under GTA has also been decided in favour of the appellant in **Rohan Motors Ltd.**

21. The learned Authorized Representative of the Department has, however, placed reliance upon a ruling dated March, 2019 of the Appellate Authority for Advance Ruling Maharashtra to contend that the amount collected towards bouncing of cheque charges amounts to supply of service, but learned Counsel for the appellant has pointed out that the said order was rectified subsequently by the Appellate Authority for Advance Ruling Maharashtra in its order dated December 12, 2019 and it was held

> "We hereby hold that the additional/Penal interest recovered by the Applicant from their customers against the delayed payment of monthly instalments of the load extended to such customers, would be exempt from GST in terms of Sl. 27 of the Notification No. 12\2017-C.T. (Rate) dated 28.06.2017."

22. Thus, for all the reasons stated above, it is not possible to sustain the impugned order dated June 18, 2015 passed by Commissioner. It is, accordingly, set aside and the appeal is **allowed**.

(JUSTICE DILIP GUPTA)
PRESIDENT

(C L MAHAR)
MEMBER (TECHNICAL)

Babita