IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No.40501 of 2014

(Arising out of Order in Original No. LTUC/485/2013-C dated 19.12.2013 passed by the Commissioner, LTU, Chennai)

M/s. Ford India Pvt. Ltd. **Appellant**
S.P. Koil Post
Chengalpattu, Chennai – 603 204.

Vs.

Commissioner of Customs **Respondent**
Chennai Outer Commissionerate
Newry Towers
12th Main Road, Anna Nagar
Chennai – 600 040.

APPEARANCE:

Shri Raghavan Ramabhadran, Advocate for the Appellant
Shri M. Ambe, DC (AR) for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No.40657/2023

Date of Hearing : 18.07.2023
Date of Decision: 08.08.2023

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order in Original No.LTUC/485/2013-C dated 19.12.2013 passed by the Commissioner, LTU, Chennai.

2. Brief facts of the case are that the appellant herein are manufacturers of cars and have obtained service tax registration for the services rendered by them. The cars manufactured by the appellants are sold to Authorized Dealers (dealers), who in turn sell the cars to the ultimate buyers. During the audit, it came to light that the

appellant extended factory warranty to the ultimate customers for a period of two years from the sale of cars and after the completion of two years, the appellant canvases for purchase of extended warranty, scheduled plan and total maintenance plan which are optional in nature. On going through the records, it appeared to the department that the appellant is a service provider to the ultimate buyers of the cars as it is a contract between the appellant and the ultimate buyer of the car and the dealer is only a seller of the three plans as stated at para 8.1 below. Consequent to the amendment of section 65(105)(zo), dealing with repairs to vehicles (for motor cars / two wheelers), with effect from 1.5.2011, it appeared that the appellant were liable to pay service tax on the above services from the said date. However, the appellants were not paying service tax on the same. Further, on perusal of the ST-3 returns of the appellant, it was seen that they have not been disclosing 'repairs of vehicles' as one of the services provided by them. As there have been continuous sale of these services to the customers through their dealers without indicating the same in their returns and without discharge service tax, it appears that the appellant have indulged in mis-statement of facts with an intent to evade payment of service tax, thereby attracting proviso to section 73(1) of the Finance Act, 1994. Consequently, Show Cause Notice dated 5.6.2013 was issued to the appellant proposing to demand service tax to the tune of Rs.3,89,87,290/- for the period from 1.5.2011 to 30.6.2012 under proviso to section 73(1) of Finance Act, 1994 along with appropriate interest under section 75 ibid besides imposition of penalty under sec. 78 of the Finance Act, 1994. After due process of

law, the adjudicating authority confirmed the proposals in the Show Cause Notice for the three services provided by the appellant to their customers along with appropriate interest and also imposed penalty equal to the service tax demand under sec. 78 of the Finance Act, 1994. Aggrieved by the said order, the appellant is now before the Tribunal.

3. No cross-objection has been filed by the respondent-department.

4. We have heard Shri Raghavan Ramabhadran, learned counsel for the appellant and Shri M. Ambe, learned Deputy Commissioner (AR) for the Revenue.

5. The learned counsel for the appellant submitted that the extended warranty plans are composite contracts involving labour by way of repairs and material by way of parts being replaced. Under the service tax regime, taxability on service tax portion of a composite works contract was made taxable for the first time w.e.f. 01.06.2007 vide insertion of Section 65(105)(zzzza). He placed reliance on the decision of the Hon'ble Apex Court in Commissioner v. Larsen & Toubro Ltd. [2015 (39) S.T.R. 913 (S.C.)]. He hence stated that Service tax is not leviable on composite contract for maintenance and repair of vehicle which entails both supply of goods and services for the period upto 01.07.2012. VAT and Service tax are mutually exclusive levies. The present demand has sought to subject the entire value to service tax, despite the fact that the spare parts were subjected to VAT. He stated that without prejudice, the appellant is entitled to claim deduction on the value of goods and materials in terms of Notification No. 12/2003 – ST dated 20.06.2003. Cum-tax benefit should also be

extended to the Appellant. Further the demand of Rs.3,03,65,844/- is time-barred. There can be no interest liability and penalty fastened on the Appellant.

6. Shri M. Ambe, learned Deputy Commissioner (AR) took us through the impugned order and reiterated the findings therein.

7. Heard both sides. We propose to take up each of the issues raised by the appellant sequentially.

8. **The extended warranty plans are composite contracts involving labour by way of repairs and material by way of parts being replaced. Service tax is not leviable on composite contract for maintenance and repair of vehicle which entails both supply of goods and services for the period upto 01.07.2012.**

8.1 A contract which has both the elements of goods and service is a works contract. Much water has flown under the bridge since service tax was levied on composite works contracts. The Hon'ble Supreme Court in the case of **Commissioner of Central Excise and Customs, Kerala and Others Vs. Larsen and Toubro Ltd. and Others** [2015-TIOL-187-SC-ST] after elaborate discussion of the various provisions and judicial pronouncements in no ambiguous terms ruled that works contract cannot be subject to Service Tax before 01/06/2007. The question which remains is whether Service Tax is leviable on composite contract for maintenance and repair of vehicle which entails both supply of goods and services for the period from 01/06/2007 up to 01/07/2012, when the negative list of services was introduced.

8.1 The facts are that the appellant offers warranty for cars manufactured by them and sold to customers through their Authorized Dealers (dealers), who also conduct the servicing of the cars. The

Appellant provides factory warranty coverage ("normal warranty") for 2 years at the time of sale of each car. The present dispute does not deal with the issue of normal warranty. The appellant also offers 'extended warranty' under three optional coverage plans (collectively "Plans") to the customers. The extended warranty plans are sold by the appellant to their car customers through their dealers. The Plans are detailed hereinbelow:

Sl.	Plan Name	Plan Coverage	What the Plan does not cover
a.	Extended Warranty Plan (EWP)	▪ Mechanical or electrical failure will be covered by repair or replacement free of cost, so long as the vehicle had been serviced by an authorised dealer of the Appellant.	▪ Normal wear & tear ▪ Depreciation ▪ Negligence
b.	Scheduled Service Plan (SSP)	▪ Periodic maintenance services and replacement (if required) relating to engine oil, oil filter, air filter, etc., ▪ Labour costs for the same.	▪ Mechanical failure ▪ Electrical failure ▪ Normal wear and tear ▪ Accident repairs ▪ Tyres ▪ Fuel
c.	Total Maintenance Plan (TMP)	▪ Periodic maintenance services ▪ Mechanical and electrical failures ▪ Wear and tear parts ▪ Labour costs	▪ Accident repairs ▪ Tyres ▪ Fuel

Whenever a customer invokes the extended warranty, the customer approaches the dealers, who provide the repairs and replace defective parts if necessitated. The dealers then raise claims upon the appellant for reimbursement of the value of the repairs and parts replaced. The appellant then reimburse the dealers for the claims so raised, inclusive of applicable Value Added Tax ('VAT') component on the parts replaced. The impugned order has demanded service tax on this transaction which is now under dispute before us.

8.2 Before we go forward a question arises as to whether the service of 'extended warranty' will be liable to tax under 'Repairs to Vehicle' service as per Section 106(65)(zo) which was introduced from 16/07/2001 or as a 'Works Contract'. As stated earlier, a contract which has both the elements of goods and service is a works contract. We find that the Hon'ble Apex Court in **Commissioner Central Excise & Customs, Kerala vs. Larsen & Toubro Ltd.** [Civil Appeal No. 6770 OF 2004/ 2015 (39) S.T.R. 913 (S.C.)] held that 'Works Contract' is a separate species of contract distinct from contracts for services simpliciter recognized by the world of commerce and law as such and has to be taxed separately as such. Hence the impugned service has to be examined as a 'works contract' with respect to its taxability.

8.3 It is the appellants contention that under the service tax regime, taxability on service tax portion of a composite works contract was made taxable for the first time w.e.f. 01.06.2007 vide insertion of Section 65(105)(zzzza). That for the period from 01.06.2007 to 30.06.2012, service portion of composite works contract was levied to service tax only in respect of the following five categories of contracts as mentioned under definition of 'works contract' under Explanation to clause (zzzza) of Section 65(105) of the Finance Act, 1994:

(i) contracts relating to erection and commissioning of plant and equipment,

(ii) construction of immovable property and civil structures,

(iii) construction of a new residential complex or a part thereof,

(iv) turnkey projects; and

(v) repair services only for immovable property, civil structures, and residential complex.

Section 65(105) (zzzza) of the Finance Act, 1994 which deals with the taxability of works contract from 01.06.2007, is reproduced below;

> *"To any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.*
>
> *Explanation.– For the purposes of this sub-clause, "works contract" means a contract wherein,–*
>
> *(i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and*
>
> *(ii) such contract is for the purposes of carrying out,–*
>
> *(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or*
>
> *(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or*
>
> *(c) construction of a new residential complex or a part thereof; or*
>
> *(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or*
>
> *(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects"*

Explanation (ii)(d) to the above section makes it clear that works contract for carrying out repair is in relation to construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry or construction of a new residential complex or a part thereof alone are covered. Repair and maintenance of vehicles, was not covered under Explanation (ii)(d). A major shift in the service tax provisions was made by the

introduction of the 'negative list' of services in the Finance Act 1994. After deleting the "definition section" from the Finance Act, 1994, one new Section 65B (Interpretations) has been inserted by the Finance Act, 2012. In the new system all services, except those specified in the negative list, were subject to Service Tax. Subsequently Notification No. 19/2012 ST dated 05.06.2012 was issued specifying that the new Section 65B (Interpretations), among others, would be effective from 01/07/2012. Section 65B(54) defines 'works contract' as under;

> *"works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;*
>
> *(emphasis added)*

It is seen from the above that after the insertion of section 65B(54) in the Finance Act 1994, from 01.07.2012 onwards, the definition of 'works contract' was expanded to include repair and maintenance services of movable properties also. Hence, the composite contracts for repair and maintenance of motor vehicles are leviable to service tax from 01.07.2012 onwards.

9. **VAT and Service tax are mutually exclusive levies. The present demand has sought to subject the entire value to service tax, despite the fact that the spare parts were subjected to VAT.**

10. **Without prejudice, the Appellant is entitled to claim deduction on the value of goods and materials in terms of Notification No. 12/2003 – ST dated 20.06.2003.**

11. **Cum-tax benefit ought to be extended to the Appellant.**

12. **Demand of Rs.3,03,65,844/- is time-barred.**

13. **There can be no interest liability and penalty fastened on the Appellant.**

14. We find that the issues raised by the appellant and listed at paras 9 to 13 above relate to the pre 01/07/2012 period. The demand in the impugned order is for the period from 1.5.2011 to 30.6.2012. Since we have already concluded that the composite contracts for repair and maintenance of motor vehicles are leviable to service tax from 01.07.2012 onwards, none of these issues survive.

15. Having regard to the facts as discussed above we set aside the impugned order. The appeal succeeds and is disposed of accordingly. The appellant is eligible for consequential relief, if any, as per law.

(Pronounced in open court on 08.08.2023)

(**M. AJIT KUMAR**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

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