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

Service Tax Appeal No.40289 of 2014

(Arising out of Order-in-Appeal No. 370/2013 dated 25.11.2013 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals), Coimbatore)

M/s. Shiva Automobiles Pvt. Ltd. **Appellant**
252, Mettupalayam Road
Coimbatore – 641 043.

Vs.

Commissioner of GST & Central Excise **Respondent**
6/7 ATD Street
Race Course Road
Coimbatore – 641 018.

APPEARANCE:

Shri G. Natarajan, Advocate for the Appellant
Shri Harinder Singh Pal, AC (AR) for the Respondent

CORAM

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

Final Order No. 40659/2023

Date of Hearing : 01.08.2023
Date of Decision: 08.08.2023

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order in Appeal No. 370/2013 dated 25.11.2013 passed by the Commissioner (Appeals), Trichy.

2. Brief facts are that the appellants are registered with the Service Tax Department and are providing services under the category 'Servicing of Motor Vehicles viz. "Authorised Service Station'. They have included their service centres and Trichy, Karur, Villupuram and Kumbakonam in their registration and making centralized payment at the registered premises at Coimbatore. It was found that the

appellants had received reimbursement of the cost of spares replaced in the course of service of vehicles during the warranty period from the manufacturer to the tune of Rs.31,20,024/- for the period from April 2011 to March 2012. It was alleged by the department that when the consideration is partly in money, value shall be the total of such monetary consideration money-equivalent of the other non-money consideration. Hence the appellant was liable to pay service tax on the value of reimbursement of spares replaced during the warranty period. As the reimbursement received is to be included in the taxable value for payment of service tax, the appellant was charged for violating the provisions of section 67 and 68 of the Finance Act, 1994 r/w Rule 7 of Service Tax Rules, 1994. Hence Show Cause Notice was issued to the appellant proposing to demand service tax amount of Rs.3,21,363/- along with other adjudicatory liabilities. After due process of law, the original authority confirmed the demand of Rs.3,21,363/- along with interest and imposed penalty under sec. 78 of the Finance Act, 1994. In appeal, the Commissioner (Appeals) after appreciating the facts and the findings of the lower authority upheld the order passed by the adjudicating authority. Hence the present appeal.

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

4. Shri G. Natarajan, learned counsel appeared for the appellant and Shri Harinder Singh Pal, learned (AR), Assistant Commissioner appeared for the respondent.

5. The learned counsel for the appellant submitted that the demand of Service Tax in this case pertain to the period April 2011-12 on the ground that while undertaking repairing and servicing of motor vehicles

during the warranty period, the amount claimed by the appellant towards reimbursement of parts replaced during such repair and servicing is liable to Service Tax. The appellant is already paying Service Tax on the amount claimed towards labour / service charges from the automobile manufacturers, for undertaking servicing and repair during warranty period. During the relevant period, any reimbursement of expenses claimed by a service provider cannot be subjected to levy of Service Tax as held by the Hon'ble SC in UOI Vs Intercontinental Consultants and Technocrats Pvt. Ltd. The appeal of the appellant for a previous period on the same matter had already been allowed by this Hon'ble Tribunal in Final Order 41429/2018 dated 02/05/2018. Further, the appellant also wishes to submit that recently the Hon'ble Supreme Court has held in the case of Tata Motors Vs DCCT 2023-TIOL-66-SC that such reimbursements received by authorized service centers from automobile manufacturers is liable to VAT. Once a transaction is held to be sale, leviable to Sales Tax / VAT, Service Tax cannot be demanded on the same transactions as held in catena of decisions. Being a periodical demand, the ingredients required for imposition of penalty under Section 78 of the Act cannot at all be said to be present in this case. In the impugned order the Commissioner (Appeals) has refused to admit the evidence produced by the appellant in support of their claim for exemption under Notification 12/2003 S.T on the ground that the details were produced only before the appellant authority. But the details have been furnished by the appellant before original authority also. Further, when no Service Tax can constitutionally be demanded on an activity amounting to sale, the

question of exempting the Service Tax payable is redundant. He hence prayed that the impugned order may be set aside, and the appeal allowed.

6. The learned AR Shri Harinder Singh Pal supported the findings in the impugned order.

7. Heard both sides.

8. Before we go forward a question arises as to whether the service rendered during the warranty period 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'. The demand of service tax is on the amount claimed by the appellant towards reimbursement of parts from the manufacturer which are replaced during repair and for servicing. 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.

8.1 It would be relevant to examine the legal position as per the Finance Act 1994. 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 is 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. We find that a coordinate Bench of this Tribunal has in the appellants own case in Final Order 41429/2018 dated 02/05/2018 held that as the spare parts used while rendering the warranty have been subject to VAT the cost of such spare parts cannot be included for purposes of levy of service tax. We have addressed the matter from a different legal perspective above.

10. We find that the demand in the impugned order pertains to the period from April 2011 to March 2012. Since we have held that the composite contracts for repair and maintenance of motor vehicles are leviable to service tax from 01.07.2012 onwards, the demand does not sustain. The other issues raised by the appellant also hence do not survive.

11. 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 8.8.2023)

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

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

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