CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH
~~~~~

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 581 Of 2011

[Arising out of OIO No.74-76/RDN/2010 dated 11.01.2011 passed by the Commissioner of Service Tax, New Delhi]

M/s Maruti Suzuki India Ltd. **: Appellant**
Finance Division, Palam Gurgaon
Road, Gurgaon, Haryana-122015

VERSUS

The Commissioner of Service Tax, Delhi **: Respondent**
17-B.I.A.E.A. House, M.G. Road,
I.P. Estate, New Delhi-110002

APPEARANCE:
Shri B.L. Narasimhan, Ms. Krati Singh and Ms. Shreya Khunteta, Advocates for the Appellant
Shri Nikhil Kumar Singh, Shri Narinder Singh and Shri Yashpal Singh, Authorised Representatives for the Respondent

CORAM: HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.60175/2024

DATE OF HEARING: 06.02.2024
DATE OF DECISION: 16.04.2024

PER: P. ANJANI KUMAR

M/s Maruti Suzuki India Ltd, the Appellant is engaged in manufacture of motor vehicles and parts thereof; vehicles manufactured by the Appellant are exported to distributors/ dealers in various countries with whom the Appellant entered into several distributorship agreements ("Agreement"), as per which the distributors are authorised to sell and distribute the vehicles manufactured by the Appellant; the distributors are also responsible for providing the after sales services to the customers in respect of the products sold; distributors are further
~~~~~

required to honour the warranty claims during the warranty period to the overseas customers. The appellant reimburses various expenses, like Export warranty, Product recall charges and Goodwill warranty, incurred by the distributors in view of the Agreements. Revenue initiated proceedings against the Appellant for the Relevant Period demanding Service Tax under Business Auxiliary Services ('BAS") on account of the expenses reimbursed to the foreign distributors under reverse charge mechanism; Accordingly, Show Cause Notices, dated 08.06.2009 (for the period 18.04.2006-2008), 30.09.2009 (for the period 2008-09) and 30.07.2010 (for 2009-10); Adjudicating Authority passed the Impugned Order-in-Original, No. 74-76/RDN/2010 dated 11.01.2011, confirming the demand of Service Tax of Rs. 5,74,43,722/-, along with interest and penalties under Sections 77 and 78 of the Finance Act,1994, by invoking the extended period of limitation and holding that the services rendered by the foreign distributors qualify as Business Auxiliary Service under sub section (i), (ii) and (iii) of Section 65(19) of the Finance Act, 1994 ('the Act') and the same were rendered on behalf of the Appellant. Hence, this appeal.

2. Shri B.L. Narsimhan, assisted by Ms. Krati Singh and Ms. Shreya Khunteta, Learned Counsels for the appellants, submits that the Adjudicating Authority confirmed the demand by holding that the services rendered by the foreign dealers qualify as BUSINESS AUXILIARY SERVICE under Section 65 (19) of the Act and that the appellant being the service receiver is liable to pay service tax under reverse charge mechanism; the impugned order has gone beyond the scope of SCN; there was no mention of specific clauses of BUSINESS

AUXILIARY SERVICE for proposing the tax demand on appellant, in the SCN; it is a settled principle of law that Order-in-Original which goes beyond the scope of the SCN is unsustainable; Similarly, the activities of the Appellant cannot be made taxable under different sub-clauses of Section 65(19) of the Act simultaneously and thus, the Impugned Order is bad in law He relies on the following.

- Syniverse Mobile Solutions Pvt Ltd. (Earlier Transcriber net India Pvt Ltd.) Vs CCE&ST, Hyderabad- IV Service Tax Appeal No. 1319 of 2010, order dated 31.05.2023;
- Balaji Enterprises Vs CCE&ST , Jaipur- 2020 (33) G.S.T.L. 97 (Tri-Del)
- United Telecoms Ltd VS CST, Hyderabad 2011 (22) STR 571 (Tri-Bang.)
- M/S Palecha Trade Services Pvt Ltd. Vs UOI 2018 (14) G.S.T.L. 351 (Raj)
- FulchandTikamchand Vs CCE&C, Nagpur 2016 (42) STR 1063 (Tri-Mumbai)
- Incredible Unique Bulidcon Pvt Ltd VS CCE&ST, Alwar 2022 (65) G.S.T.L. 377 (Tri. Del)

3. Learned Counsel for the appellants submits further that the services rendered by the foreign dealers are in the nature of authorised service station's services and cannot be subject to service tax under 'BAS'; services rendered by the overseas distributors/ dealers by rendering after sales including warranty services to the customers do not fall within the ambit of clause (1) of 'BAS' which covers promotion, marketing and sale of goods produced or provided by the client; the Appellant cannot be called as a client of the foreign distributors/dealers as the relationship between them is that of a manufacturer and a dealer; there is no principal agent relationship between the Appellant and the overseas

distributors/ dealers appointed by the Appellant; the said distributors/ dealers are acting as independent contractors, which is also apparent from the terms of the Article 5 of the Agreement; the overseas distributors are engaged in trading activity ie., buying goods from the Appellant and selling it to the customers in open market and act as sales dealer of the Appellant as per Article 12(b) of the Agreement; thus, the services rendered by the foreign distributors/ dealers etc. cannot be said to be in nature of promotion or marketing of goods of the Appellant and hence not covered by sub-clause (1) of the definition of BAS. He relies on

- M/S. Rohan Motors Limited Vs CCE, Dehradun 1997 (91) ELT 540;
- Philips India Ltd. Vs CCE, Pune 2020 (12) TMI 1014-CESTAT New Delhi
- Mahindra & Mahindra Ltd. Vs CCE, Bombay 1998 (103) ELT 606 (Tribunal) (affirmed by Supreme Court in 1999 (111) ELT A126 (SC)]
- CCE, Mysore Versus TVS Motors Co. Ltd 2016 (331) ELT 3 (SC.)

3.1. Learned Counsel for the appellants submits also that clause (ii) under 'BAS' covers promotion or marketing of service provided by the client; it is not applicable in the instant case as the Appellant does not qualify as client of the foreign dealer/ distributors; the Appellant is not providing any service to the foreign dealers/distributors. He submits that the Adjudicating Authority wrongly held that the foreign dealers are rendering Business Auxiliary Service by maintaining an efficient and reliable sale network in relation to sale of goods produced or provided by the Appellant; foreign dealers/ centres are working under two capacities

which are independent of each other.; one, the foreign dealers act as sales dealer undertaking trading activity wherein the goods are purchased from the Appellant and the same are sold to the customers; two, the dealers/ distributors are providing warranty/ after sales services and act as merely authorised service station of the Appellant; the second activity of being an authorised service station cannot be said to be in relation to the sale of the cars and thus cannot be subject to tax under BAS; Circular No. 699/15/2003-CX dated 05.03.2003, clarified that the activity of sales dealer is distinct from that of an authorised service centre.

3.2. Learned Counsel for the appellants submits, in addition, that it is further submitted that clause (iii) will be attracted if a service provider provides any service to a third party on behalf of the client; the foreign dealers are not rendering any customer care service on behalf of the Appellant as the same may include complaint handling, help desk services, etc; clause (iii) will be attracted if a service provider provides any service to a third party on behalf of the client; in the instant case, the foreign dealers are not providing any services to the customers on behalf of the Appellant; the distributors are providing warranty service to the customers directly in accordance with the warranty policy of the Appellant as per Article 19 of the Agreement; the Appellant does not qualify to be a client of the foreign dealers/ distributors; rather there is a relationship of manufacturer and dealer between them; in their own cases, i.e. Maruti Suzuki India Ltd 2008 (232) ELT 566 (Tri. Del.) and Maruti Udyog Limited 2004 (170) E.E.T. 245 (Tri. Del.) that the

distributors are the dealers of the Appellant and are not acting on behalf of the Appellant.

4. Learned Counsel for the appellants, takes us through Section 65(9) and Section 65(105)(zo) of Finance Act,1994 and submits that in the instant case, the overseas distributors/dealers are responsible to provide after sale services including maintenance and repairs of the products manufactured by the Appellant during the warranty period; the activities undertaken by the overseas distributors/ dealers are more specifically covered under the definition of authorised service station services; Board Circular No. B11/1/2001-TRU, dated 9-7-2001 states that any service or repair provided by an Authorized Service Station in relation to motor cars and two-wheeled motor would be covered under the ambit of Service Tax; Circulars No. 96/7/2007-ST dated 23.08.2007 and No. 87/05/2006-ST dated 06.11.2006 reiterate the same; the examples of services would include services provided under warranty period, subsequent services such as routine check of engine, vehicle, engine oil check, gas oil check, wheel alignment, etc., or any repair undertaken as such. He submits that without prejudice the above, since the services provided by the foreign distributors are more specifically covered under authorised service station, the demand cannot be confirmed under a general category i.e., under business auxiliary service. He relies on the following cases:

- M/s. Uttam Toyota Vs CCE & ST, Ghaziabad, ST/1094/2010-CU (DB) CESTAT Allahabad order dated 27.12.2018.
- M/s. Uttam Toyota Vs CCE, Ghaziabad 2019-TIOL-2930-CESTAT-ALL

5. Learned Counsel for the appellants submits further that even if the Appellant is liable to pay service tax under Section 66A of the Act, the service tax so paid is admissible as credit as the said service amounts to input service and can be utilized in payment of excise duty on goods manufactured by It; the entire exercise is revenue neutral. He relies on M/s John Energy Limited Vs CCE & ST. Ahmedabad-III, CESTAT Ahmedabad, Appeal No. ST/280/2009-DB, order dated 26.11.2018 and Sarovar Hotels Pvt Ltd. Vs CST, Mumbai 2018 (10) G.S.T.L. 72 (Tri. - Mumbai).

6. Learned Counsel for the appellants submits that the reimbursement of the expenses does not form part of the consideration for the purposes of valuation of the taxable service under Section 67 of the Act read with Rule 5 of the Service Tax (Determination of Value) Rules, 2006 and thus the same is not liable to service tax; accordingly, in the instant case, the reimbursements made by the Appellant to the dealers/distributors for various expenses incurred by them in respect of export warranty, product recall charges and goodwill warranty do not constitute consideration and thus the same cannot be subject to service tax. He relies on Intercontinental Consultants & Technocrats Pvt Ltd. Vs UOI 2013 (29) STR 9 (Del.) (affirmed by Supreme Court 2018 (10) G.S.T.L. 401 (SC).

7. Learned Counsel for the appellants submits that the SCN demanding Rs. 3,27,97,000, pertaining to the period 18.04.2006 to 2008, was issued on 08.06.2009, invoking the extended period; extended period of

limitation cannot be invoked as there was no wilful suppression of any fact relating to the activities carried on by the Appellant; the Appellant was subjected to regular audit by the department from time to time; department was very well aware about the activities of theAppellant; considering the fact that demand was raised basis the audit objections, involves interpretation of the complex provisions and is revenue neutral, extended period of limitation could not be invoked. He relies on the following.

- Mahanagar Telephone Nigam Ltd. Vs UOI 2023-TIOL-407-HC-DEL-ST
- CCE&C Vs M/s Reliance Industries Ltd 2023-TIOL-94-SC-CX
- Hyundai Motor India Pvt Ltd. Vs CCE& ST, LTU, Chenai 2019 (29) G.S.T.L. 452 (Tri. - Chennai) (Affirmed by Supreme Court in 2020 (32) GSTL J154

8. Learned Counsel for the appellants submits that when no service tax is payable, question for payment of interest under Section 75 of the Act and penalty under Section 77 and 78 does not arise; penalty under Section 78 cannot be imposed; the department was aware about the activities of the Appellant at the time of issuing SCN for the period 2004-05 to 2007-08; extended period cannot be invoked for subsequent period as there was no suppression on part of the Appellant. He relies on Nizam Sugar Factory Vs CCE, AP 2006 (197) ELT 465 (SC).

9. Shri Nikhil Kumar Singh, assisted by Shri Narinder Sigh and Shri Yashpal Singh, Learned Authorised Representatives for the Revenue, reiterates the findings of the impugned order. He submits that the

argument of the appellants on the ground that the notice did not specify the sub clause of 'BAS' and reliance on the tribunal in the case of ITC Ltd-2014(33) STR 67 (Tri-Del) is not correct as Hon'ble High Court of Delhi, on an appeal filed by the department, vide order dated 23.07.2014 (2014(36) STR.481), held that the object and purpose of show cause notice is to inform the assessee so that reply or submissions can be made and relevant facts which are in the knowledge of the assessee can be brought on record; the judgement was upheld by Hon'ble Apex Court 2015(38) STR J362 (SC). He submits that reliance on the decision of the Supreme Court in Amrit Foods 2005 (190) ELT 433 (SC) is not valid keeping in view the factual matrix in the present case. He submits that it is a settled position that when we examine the Show Cause Notice, we have to take into consideration that the object and purpose is to inform the recipient of the allegations against him so that he can meet them effectively and is not prejudiced by manifestly vague notice which leaves him confused and unable to answer/reply; the assessee must be given reasonable and real opportunity and be made aware as to what he has to meet. Hon'ble Supreme Court in the Case of Pradyumna Steel Ltd Vs CCE, Calcutta 1996 (82) ELT 441 (SC) held that mere mention of a wrung provision of law when the power exercised is available even though under a different provision, is by itself not sufficient to invalidate the exercise of that power.

10. Learned Authorised Representative submits that as the SCN satisfies the above, reliance on various cases by the appellant will not help their case for the following reasons.

(i). Hevea Crumb Rubber Private Limited. 1983(14) ELT.1685-Kerala is a case of central excise pertaining to the period 1983, when service tax was not in existence.

(ii). Vairavan Thandal- 2000(125)ELT94MAD pertains pertained to the period of 1969 when even the concept of service tax did not exist; it concerns with invoking sections 111(d)d 111(o), 112, and 121 of Custom Act, 1962; the instant case is of classification of a service; order has been passed specifying the subject classification of service.

(iii) Audo Viso corporation 1991(53) ELT3 (Tri) is about changing the classification of goods imported without giving reasons, whereas, in the instant case, the adjudicating authority has taken into account all the contentions made by the appellant and given a detailed order with the reasoning.

11. Learned Authorised Representative takes us through definition and submits that the services provided by the foreign dealers to the appellants are not in the nature of Authorized Service Stations Services and falls under BAS: the distributors of the appellant located abroad are not providing services of service, repair etc. of motor vehicles to the appellant; they are doing this activity of repair & service of motor vehicle to the customers who had purchased those vehicles in that country; these distributors are Authorized service stations for those customers who purchase the vehicles for them; as the ownership of the vehicles get transferred to those customers after the purchase of vehicles and it cannot be in any way construed that the services of repair/service of motor vehicle is being done by the distributors for the appellants.

12. Learned Authorised Representative takes us through different agreements and submits that no cognizance of this agreement dated 01.10.2003 can be taken as the appellant is not a party to this agreement; it is also not on record whether the appellant has paid any amount in reference to this agreement; this agreement at best, be considered to know the activities carried out by the distributors for Maruti Suzuki Ltd. He submits that as regards Distributorship agreement dated 01.01.2009, between Maruti Suzuki, India Ltd, New Delhi and CMC motors groups Ltd., Nairobi, Kenya, (in short, CMC Motors), it is seen that CMC Motors has been appointed as distributor for selling and distributing the products of the appellants in the jurisdiction enter territory of Kenya; as per the agreement the distributor is required to carry out various activities including selling the products of the appellants, cooperation with respect to MSIL Direct Sales to Certain Persons in Territory, After-sales Services, Not to Sell Competitive Products, manage distributor's organization, manage dealers for sale of products of the appellants, provide warranty for the products of the appellant, promote the goodwill and reputation production and advertising of the products of the appellants.

13. Learned Authorised Representative submits that it is clear from the above the activities for which the distributor has been appointed are not covered under the definition of the Authorized Service Station; though the distributor is carrying out repair/service of motor vehicles but not for the appellants but for the customers for creating goodwill of the appellant

and thereby contributing in the promotion of the products and sale of the appellants; the Overseas Distributors are responsible for handling the warranty claims, monitoring of repairs and maintenance services and the establishment and monitoring of a network of Authorized Repairers for the products of the appellant; all warranty claim repairs are undertaken by the Authorized Repairers; the cost of such repairs are incurred by the Overseas Distributors and later reimbursed by the appellant. In the case of cars cleared for home consumption, the warranty claim services are rendered by the appellants through their dealers to the car owners whereas in the case of cars exported it appeared that the Overseas Distributors rendered the warranty claim services on behalf of the appellant through the network of Authorized Repairers established and monitored by the Overseas Distributors; though the cars are first sold to Overseas Distributors and subsequently sold to the ultimate buyers, for the limited purpose of warranty services, the appellants continued to have the relationship of a service provider to the buyer of the car; the Overseas Distributors are contractually bound to provide such services on behalf of the appellant; it is the responsibility of the appellants to establish and monitor the network of Authorized Repairers.

14. Learned Authorised Representative submits that the Overseas Distributors are responsible for handling the warranty claims, monitoring of repair and maintenance services and the establishment of an entire network of Authorized Repairers for the appellant products; the appellant sells the cars to the Overseas Distributors who in turn sell it to the ultimate consumers; the appellant being the manufacturer is liable to

oblige the warranty claim for which the amount is paid to Overseas Distributors who provide the repair services on behalf of the appellant; liability to pay Service Tax is cast upon the appellant under reverse charge mechanism, as provided in Section 66A of the Finance Act, 1994 under Business Auxiliary Services; the Overseas Distributors are mandated to promote and market the sale of cars and such sales promotion and marketing is also an activity that falls within the definition of Business Auxiliary Service; though the Overseas Distributors may have carried out the repair and maintenance services and established the network of Authorized Repairers for the benefit of the manufacturer; the adjudicating authority has clearly observed that provision of service on behalf of the client, including customer care services, are rendered by the Overseas Distributors and such activity also falls within the definition of Business Auxiliary Service.

14.1. Learned Authorized Representative relies on the case of Hyundai Motors (India) Pvt. Ltd. (supra) and submits that the facts of the case therein are similar to the impugned case. Tribunal has held in the above case that the overseas distributors/ dealers are rendering "Business Auxiliary Service" to M/s Hyundai Motors. He submits that in the instant case, it is to be construed that the overseas distributors/ dealers are agents of M/s Maruti Suzuki (India) Ltd. and are rendering "Business Auxiliary Services" to the appellants as alleged in the impugned show-cause notice and as correctly confirmed in the impugned order.

14.2. Learned Authorized Representative submits that the cases relied upon by the appellants are distinguishable from the present case for the following reasons.

(i). the case of M/s. Rohan Motors Limited (supra) deals only with dealership agreement and in respect of discount and incentive to the car dealers; whereas, in the instant case, the issue is in respect of overseas distributors, engaged in handling warranty claims, monitoring, repair and maintenance services, establishing entire network of authorized repairs for the appellant.

(ii). The case of Philips India Ltd (supra) deals with the issue of reduction of trade discount by 2% representing adjustment for advertisement expenses and free after sale service by the department considered was un called for; the present case involves totally different facts and circumstances therefore cannot be made applicable in the instant case

(iii). The cases of Mahindra and Mahindra Ltd (supra) and Maruti Suzuki India Ltd are about the cost of advertisement incurred by the dealers and reimbursed by the manufacturer/ pre-delivery inspection and after sale services charges and their includability in the assessable value; a case of valuation under section 4 of Central Excise Act and cannot be made applicable to the instant case of section 66 A of finance act which was introduced in 2006. He further submits on the claim of Revenue Neutrality in view of the judgement of Apex Court in the case of BCCI following Dharampal Satyapal vs. CCE-2005(183) ELT241(SC).

15. Learned Authorised Representative submits on the appellant's submission that the Cost of material and goods not be included in the

taxable Service and Reimbursable expenses cannot be subject to levy of service tax that Notification no. 12/2003-ST dated 20.06.2003 provides exemption to the value of goods and materials sold by the service provider to the service recipient, with the condition that there is documentary proof indicating the value of the said goods and materials; as per the ratio of Tribunal held in the case of Ador Fontech Ltd. - 2014(36)STR; Mahendra Engineering Limited 2015 (38) STR 233 (All.). 146(Tri-Mumbai) and Tanya Automobiles (P) Ltd. vs. CCE - 2016(43) STR. 155 (Tri. -All), the exemption is available only when goods are sold during the course of the provision of service; there is documentary evidence in relation to the sale of said goods and if the appellant have not availed Cenvat credit on the said goods/ materials. He submits that the case of Hon'ble High Court of Delhi in the case of Intercontinental Consultants & Technocrats Pvt. Ltd 2013 (29) STR 9 (Del.), is not applicable to the facts of the instant case as the same are totally different; the instant case which governed by the provisions of Rule 7 of the Service Tax (Determination of Value) Rules, 2006. He relies on Bhandari Hosiery Exports Ltd. 2010 (18) STR 713 (P & H).

16. Learned Authorised Representative submits that in view of above provisions, it is clear that import of all the taxable services has been categorized in three categories i.e. (i) services for which import criteria is based on location of immoveable property; (ii) services for which import criteria is based on location of performance of services and

(iii) services for which import criteria is based on location of recipient of services; Business Auxiliary Services received by the appellant falling

under Section 65 (105)(zzb) is covered under sub Rule (iii) of Rule 3and based on location of service recipient, the legislature has shifted the liability to pay the Service Tax from provider of service to the recipient of service; the appellant being the recipient of Business Auxiliary Services is required to pay service tax on the gross expenditure incurred on such services during the relevant period.

17. Learned Authorised Representative submits on the issue of limitation that the adjudicating authority has given elaborate findings on the aspect of limitation & penalty; the appellants have failed to make correct and full declaration in the mandatory ST-3 returns; the appellant were paying Service tax of advertising charges which is also part of the same agreement with the overseas distributor but intentionally suppressed the figures in respect of other charges As such, the appellant intentionally chose not to disclose the amount collected by them from the customer with intent to evade the service tax. He relies on Days Inn Deccan Plaza vs. CST (Appeals)- 2016(45) STR.202 (Mad.); Star India Pvt Ltd. Vs CCE, Thane-I 2015 (38) STR 884 (Tri. Mumbai) and Tech Mahindra Ltd Vs CCE, Pune-III 2015 (38) STR 1200 (Tri. Mumbai).

18. Learned Counsel for the appellant submits additional written submissions dated 24.07.2023 and submits that the case of Hyundai Motor India (supra) relied upon by the Department did not consider the binding precedents rendered by the co-ordinate benches in the context of domestic transactions in Uttam Toyota and Mahindra & Mahindra (both supra); Hyundai Motor India Pvt. Ltd. case did not consider a statutory

provision relating to "Authorized Service Station Service" under Section 65(9) and Section 65(105)(zo) of Finance Act, 1994; the order did not consider CBEC Circulars dated 09th July 2001, 23rd August 2007 and Hon'ble Apex Court's decision in the cases of TVS Motors and Philips India (both supra). Learned Counsel submits that Hon'ble Supreme Court held in the cases of Babu Prasad Kaikadi- 2004 (1) SCC 681 and Government of West Bengal Vs Tarun K. Roy & Others – 2004 (1) SCC 347 that judgments which are rendered *per incuriam* statutory provisions are binding Higher Courts' judgments or binding judgments of co-ordinate benches have no precedential value and hence to be ignored. Larger Bench of the Tribunal in the case of Urison Cosmetics Ltd. – 2006 (198) ELT 508 (Tri. LB) held that Hon'ble Madras High Court judgment in identical circumstances was *per incuriam*; Hon'ble Apex Court affirmed this decision in the case of Kraftech Products- 2008 (22) ELT 504 (SC).

19. Heard both sides and perused the records of the case. Learned Authorized Representatives for the Department raises a preliminary objection that there were three show-cause notices involved in the case and they were adjudicated by the Commissioner of Service Tax, New Delhi vide three Orders-in-Original No.74-76/RDN/2010 dated 11.01.2011; in view of the Rule 6A of CESTAT (Procedure) Rules, 1982, the appellant was required to file a separate appeal against each Order-in-Original; he relies on AIIMS Industries Ltd.- 2014 (313) ELT 20 (Guj.) and Shree Cement Ltd. – 2009 (247) ELT 383 (Tri.Del.). On the contrary, Learned Counsel for the appellants submits that it has been held in Parle Biscuits Pvt. Ltd. – 2017-TIOL-2854-CESTAT-CHD and Satake India

Engineering Pvt. Ltd.- 2014 (303) ELT 451 (Tri. Del.) that different appeals need not be filed.

19.1. We find that Rule 6A of CESTAT (Procedure) Rules, 1982 is as follows:

> "Notwithstanding the number of show cause notices, price lists, classification lists, bills of entry, shipping bills, refund claims/ demands, letters or declarations dealt with in the decision or order appealed against, it shall suffice for purposes of these rules that the appellant files one Memorandum of Appeal against the order or decision of the authority below, along with such number of copies thereof as provided in Rule 9.
> Explanation:
> (1) In a case where the impugned Order-in-Appeal has been passed with reference to more than on Orders-in-Original, the Memoranda of Appeal filed as per Rule 6 shall be as many as the number of the Orders-in-Original to which the case relates insofar as the appellant is concerned.
> (2) In case an impugned order is in respect of more than on persons, each aggrieved person will be required to file a separate appeal (and common appeals or joint appeals shall not be entertained)"

19.2. We find that Tribunal has dealt with this issue in the case of Satake India Engineering Pvt. Ltd. (supra) and held as follows:

> **6.** Rule 6A of the CESTAT (Procedure) Rules, 1982 requires one Memorandum of Appeal to be preferred against the order or decision of the authority below, notwithstanding the number of show cause notices, price lists, classification lists, bills of entry, shipping bills, refund claims/ demands, letters or declarations adjudicated in the decision or order to the appealed against. Thus, where an adjudication order and is passed in respect of several show cause notices by way of a composite order, only one appeal need be filed. This is so irrespective of whether the composite order-in-original is given a single number or multiple numbers. However, where distinct numbers are given to a composite adjudication order, passed in respect of

> a several show cause notices, and against such adjudication order appeals are preferred to the Commissioner (Appeals), in such circumstances, as many appeals must be filed before this Tribunal as the number of orders-in-original to which the case relates, in so far as the appellant is concerned. This is a consequence of Explanation (1) to Rule 6A.
>
> **7.** In the present matters, in respect of which this reference is preferred to the Bench, the subject matter of the challenge in each of the appeals is to a composite order-in-original bearing distinct numbers pertaining to multiple show cause notices. In the circumstances it is Rule 6A and not Explanation (1) that applies. As a consequence, one appeal against each of the impugned orders-in-original, even though distinct numbers are provided by the adjudicating authority to each of the composite orders, would suffice.

19.3. On going through the Rule 6A and the decision as above, we find that as per the procedure so many appeals need to be filed as there are Orders-in-Original. In the instant case, though there are three show-cause notices, they have been dealt by a single order. Assigning three numbers to one impugned order does not make it three different orders. Therefore, we find that the appellants have correctly filed one appeal against one impugned order. The preliminary objection raised by the Department has no force and hence is not acceptable.

20. One of the main contentions of the appellants was that the show-cause notice does not specify the specific sub-clause under "Business Auxiliary Service" as defined under Section 65(19) of the Finance Act, 1994. Learned Counsel for the appellant relies on some cases and submits that show-cause notice issued without specifying the sub-clause under the "Business Auxiliary Service" would vitiate the proceedings.

Learned Authorized Representative, on the other hand, relies on the decision of the Hon'ble Delhi High Court in the case of ITC Ltd. (supra) which was upheld by the Hon'ble Apex Court. We find that Hon'ble High Court has held as follows:

> **17.** When we examine the Show Cause Notice, we have to take into consideration that the object and purpose is to inform the recipient of the allegations against him so that he can meet them effectively and is not prejudiced by manifestly vague notice which leaves him confused and unable to answer/reply. The assessee must be given a reasonable and real opportunity and made aware as to what he has to meet. But, the notice cannot be read as a legislative enactment which is to the point, precise and required to show exceptional lucidity. What is required to be seen is whether the allegations made have been conveyed and set forth, to enable the recipient/assessee to get an opportunity to defend himself against the charges. Notice should not suffer from obscurity and unintelligibility as to deny a fair and adequate chance to the recipient/assessee to get himself fully exonerated and avoid incidence of tax. What transpired after the notice was served, conduct of the parties thereafter, hearing given, are all factors that have to be examined to ascertain as to any prejudice was caused resulting in an arbitrary and unjust decision. Principle of prejudice resulting from vagueness and uncertainty has to be examined in pragmatic and a reasonable manner.

20.1. We also find that Hon'ble Apex Court held in the case of Pradyumna Steel Ltd. (supra) that mere mention of wrong provision of law, when the power exercised is available even though under a different provision is by itself not sufficient to invalidate the exercise of that power. We find that the show-cause notice was issued alleging that the appellants have not paid the service tax for the various services received by them from their overseas dealers/ distributors and that such services fall under "Business

Auxiliary Service". We find that the show-cause notice mentions at Para 7 that the appellants are incurred an expense on account of advertisement for sale promotion which appear to be covered under BAS. Thus, it is seen that in the instant case, the purport of the show-cause notice is to put the appellants on notice that they have received services from their foreign dealers and have not discharged due service tax under the BAS. Though, the specific sub-clauses have not been enumerated, the intent of the notice has been made clear and therefore, in view of the judgment of the Hon'ble High Court cited above, we find that the proceedings are not vitiated. In view of the same, we find that judgments cited by the appellant are not applicable in the particular facts of the case.

21. Now, we turn our attention to the main issue involved in the case i.e. whether the appellants have received services under "Business Auxiliary Services" from their overseas distributor/ dealers and if so whether they are liable to discharge duty on Reverse Charge Mechanism. The appellants entered into several distributorship agreements with overseas dealers; in terms of the said agreement, the distributors are authorized to sell and distribute the vehicles manufactured by the appellants; provides after-sale service to the customers and honour the warranty claims. The appellant reimburses various charges incurred by the distributors in providing warranty, product recall service and goodwill warranty. Revenue seeks to charge service tax on these services claiming that the appellants have received such services, which can be categorized to fall under "Business Auxiliary Services" and the appellants are required to pay service tax on Reverse Charge Mechanism. While the appellants

claimed that the relationship between themselves and the overseas distributors/ dealers is one of "Principal to Principal" basis and as such the distributors are authorized service stations and hence cannot be said to have rendered any "Business Auxiliary Service"

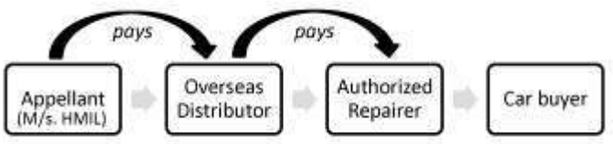
22. Learned Counsel for the appellants relies on Rohan Motors Ltd., Philips India Ltd., Mahindra & Mahindra Ltd., CCE Vs TVS Motors Co. Ltd., Maruti Suzuki India Ltd. and Maruti Udyog Limited (all supra) and submits that the appellants cannot be said to be the clients of their foreign dealers/ distributors and that the relationship between the appellant and their foreign dealers/ distributors is not one between the principal-agent but one of principal-to-principal basis. On the other hand, learned Authorized Representative submits that as per the agreement, the distributor is required to carry out various activities including selling the products of the appellants, cooperation with respect to MSIL direct sales to persons in their territory, after-sale service in addition to management of distributorship organization, managed dealers for sale, provide warranty and promote the good-will and reputation. It is pertinent to note that though, the free repairs during the warranty period are undertaken by the dealer, the customer perceives that the same are provided by the manufacturer of the car. The dealers/ distributors are always associated with the manufacturer. To that extent, it is understood that the dealer/ distributor is performing his work on behalf of or as an agent of the manufacturer in this case, the appellants. Similarly, in advertising, promotion of good-will, overseeing the network of dealers/ distributors, business interest of the manufacturer of the motors is taken

care even though the activity aids for his own business promotion. Therefore, we are not in agreement with the submission of the learned Counsel for the appellant that the relationship between the appellant and the overseas dealers is on a principal-to-principal basis. As long as the overseas dealers/ distributors are rendering some service on behalf of/ on account of/ in connection with the business of the appellant, they take the role of the manufacturer/ appellant. The overseas dealer/ distributor is receiving a consideration for this purpose. Therefore, we find that there is a force in the argument of the Department that the services rendered are in the nature of BAS.

22.1. We find that Chennai Bench of the Tribunal has gone into an identical issue concerning a similarly placed manufacturer of motor cars, i.e Hyundai Motors India Pvt. Ltd. (supra), having similar arrangements with the overseas dealers has decided that the overseas dealers/ distributors are rendering services classifiable under BAS to the appellants therein. The Bench observed as follows:

> **6.1** As per the show cause notice dated 28-3-2004, it is stated that as per the agreements entered into between M/s. Hyundai Motor Corporation, Korea and the Overseas Distributors, the said Overseas Distributors are responsible for handling the warranty claims, monitoring of repair and maintenance services and the establishment of an entire network of Authorized Repairers for Hyundai cars. Thus, the appellant sells the cars to the Overseas Distributors who in turn sell it to the ultimate consumers.
>
> **6.2** All the cars have attached warranty conditions for repair and maintenance. The Overseas Distributors carry out the warranty claims through Authorized Repairers. The expenses incurred by the Authorized Repairers are paid by the Overseas Distributors. The appellant then reimburses the amount incurred by the Overseas Distributors. The

chain of transaction can be represented diagrammatically as under:



show cause notice it is seen that the demand is raised on the labour charges for services paid by the appellant to the Overseas Distributors. The appellant being the manufacturer is liable to oblige the warranty claim for which the amount is paid to Overseas Distributors who provide the repair services on behalf of the appellant. The liability to pay Service Tax is cast upon the appellant under reverse charge mechanism, as provided in Section 66A of the Finance Act, 1994 under Business Auxiliary Services.

7.1 For better appreciation, the definition of 'Business Auxiliary Service' as per Section 65(19) of the Finance Act, 1994 during the relevant period is noticed as under :

"(19) "business auxiliary service" means any service in relation to, -

(i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or

(ii) promotion or marketing of service provided by the client; or

Explanation. - For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "service in relation to promotion or marketing of service provided by the client" includes any service provided in relation to promotion or marketing of games of chance, organized, conducted or promoted by the client, in whatever form or by whatever name called, whether or not conducted online, including lottery, lotto, bingo;

(iii) any customer care service provided on behalf of the client; or

(iv) procurement of goods or services, which are inputs for the client; or

Explanation. - For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;

(v) production or processing of goods for, or on behalf of, the client;

(vi) provision of service on behalf of the client; or

(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision,

and includes services as a commission agent, but does not include any activity that amounts to "manufacture" within the meaning of clause (f) of Section 2 of the Centrai Excise Act, 1944 (1 of 1944).

…….".

7.2 In the show cause notice, the activity that is sought to be brought within the definition of 'Business Auxiliary Service' is the handling of warranty claims and monitoring of repair and maintenance services. Paragraph 3 of the show cause notice, where the definition of Business Auxiliary Service is reproduced by the Department, highlights sub-clause (vi) of the definition so as to allege that the Overseas Distributors are providing service of warranty repairs on behalf of the appellant and therefore, the activity would fall within the definition of Business Auxiliary Service. However, at the time of adjudication, the Original Authority in paragraph 13.1 has observed that the Overseas Distributors are mandated to promote and market the sale of cars and such sales promotion and marketing is also an activity that falls within the definition of Business Auxiliary Service. In paragraph 13.2, the adjudicating authority has observed that provision of service on behalf of the client, including customer care services, are rendered by the Overseas Distributors and such activity also falls within the definition of Business Auxiliary Service.

8.1 After analyzing the arguments put forward by both sides and perusing the records, we do not find that the appellants had paid any incentives to the Overseas Distributors for sales promotion and marketing. The entire demand is on the amount paid by the appellant to the Overseas Distributors for the warranty claims. The adjudicating authority is of the opinion that when the Overseas Distributors establish the network of Authorized Repairers for carrying out the warranty claims on behalf of the manufacturer (appellant herein), the said activity would be customer care service and also provision of service on behalf of the client. It needs to be said that though the Overseas Distributors may have carried out the repair and

> maintenance services and established the network of Authorized Repairers for the benefit of the manufacturer, the Overseas Distributors have not directly carried out any service to the customer.
>
> **8.2** However, when the Overseas Distributor is establishing the network of Authorized Repairers for carrying out the warranty responsibility of the appellant, indeed, this will satisfy 'customer care services' provided on behalf of the client contained in sub-clause (iii) of the definition of 'Business Auxiliary Service', and would be taxable.

23. In view of the above, we have no hesitation whatsoever, to conclude that the services rendered by the overseas dealers/ distributors are services categorized under BAS and thus, the appellants are required to pay service tax on Reverse Charge basis. Learned Counsel for the appellants has relied upon some cases as stated above to conclude that the relationship between them and the overseas distributors/ dealers is not that of a client and principal but was on principal-to-principal basis. We have gone through the cases and find that the cases are not applicable as the facts are not comparable. As submitted by the learned Authorized Representative for the Department, they are on the issues which are different from those discussed in the instant case. For the same reason, we find that the contention of the learned Counsel for the appellants that the decision of the Chennai Bench of the Tribunal in the case of Hyundai Motors (supra) be considered as *per incuriam*, is not acceptable. We find that as the case of Hyundai Motors is squarely applicable with the facts of the case, there is no need to refer to the cases cited by the appellants in this regard and the facts do not warrant us to opine that the order in Hyundai Motors is *per incuriam*.

24. Learned Counsel for the appellants has taken the alternate plea that the issue is revenue neutral as whatever amounts they pay as service tax on RCM basis would be available to them as CENVAT credit. We find that this argument is not acceptable as it would disturb the very scheme of CENVAT credit. Had the appellants paid duty as applicable, there was no way that anybody would have stopped them for availing CENVAT credit, if due. We find that learned Authorized Representative has rightly relied upon the cases of Dharampal Satyapal (supra) and Siddeshwar Textile Mills Pvt. Ltd.

25. Learned Counsel for the appellants also submits that the reimbursement of the expenses does not form part of the consideration. In this regard, we find that as contended by the learned Authorized Representative for the Department, the exemption under Notification No.12/2003-ST dated 20.06.2003 is admissible only when goods are sold during the course of provision of service; there is documentary evidence in relation to the sale of said goods and if the appellants have not availed CENVAT credit. We find that learned Counsel for the appellants has not advanced any arguments in this regard and no evidence has also been placed before us. Therefore, we find that in the instant case, the gross value of taxable service for the purpose of computation of service tax shall be the gross amount paid by the recipient of such service.

26. We find that learned Counsel for the appellants has also put forth arguments on limitation. He submits that the service tax demand pertains to the period 18.04.2006 to 2008 and the show-cause notice was issued

on 08.06.2009; there was no wilful suppression of any fact relating to activities carried on by the appellant; the appellants were regularly filing ST-3 Returns the appellant was subjected to regular audit; the issue involves interpretation and therefore, extended period cannot be invoked. We are in agreement with the contentions of the appellants. We find that no case has been made by the Department to show any positive act with an intent to evade payment of duty. We find that it was held in the case of Sunshine steel Industries- (2023) 8 Centax 209 (Tri. Del) [upheld by the Hon'ble Supreme Court (2023) 8 Centax 210 (SC)] that extended period cannot be invoked for a demand raised on the basis of audit. Therefore, we find that extended period cannot be invoked and the demand needs to be sustained only for the normal period. Looking into this background, we find that imposition of penalties is also not justified in the instant case.

27. In view of the above, the impugned order is modified to the extent of confirming the demand for the normal period; penalties imposed are set aside; the appeal is partially allowed as above.

(Order pronounced in the open court on 16/04/2024)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

PK