(2015) 10 CESTAT CK 0001

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 119 Of 2009

C.C.E., Raipur — APPELLANT

Vs

M/s. Ralas Motors — RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:

Citation : (2015) 10 CESTAT CK 0001

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : Ranjan Khanna, Rishi Chanan

Final Decision : Dismissed

Judgement

1. The appeal has been filed by Revenue against Order-in-Appeal dated 12.11.2008 which set aside the Order-in-Original dated 17.06.2008 on merit

as well as on the ground of time bar. The said Order-in-Original had confirmed the service tax demand of Rs.3,58,199/- for the period July, 2004 to

September, 2005 under Business Auxiliary Service (BAS) along with interest and penalties on the ground that the respondent had received

Rs.35,84,761/- as sales incentive from Mahindra & Mahindra Ltd. The Commissioner (Appeals) observed that"" on the contrary, the details of

incentive scheme enclosed with the Appellant's letter dated 17.02.06 addressed to the Superintendent (Audit), Raipur reveals that the entire

component of sales incentive had been passed on to the customers. Since such incentives to the customers are in the nature of promoting

sale of cars on which customers pay sales tax, it is my considered view that Service Tax is not leviable on such incentives when sales tax has

been paid. This proposition finds support from the decision in the case of M/s.

ASL Motors Pvt. Ltd. (supra).

2. Revenue in its grounds of appeal has essentially stated that the observations of the Commissioner (Appeals) that the entire sales incentive amount

of Rs.35,84,761/- had been passed on to the customers and such incentive was for sale of goods and subjected to levy of sales tax is not based on

facts, because the respondent had not added the discount in the value of goods and hence, it was not taxed under sales tax/VAT.

3. Ld. advocate for the respondent cited CESTAT judgement in the case of ASL Motors Pvt. Ltd. Vs. CCEST, Patna [2008 (9) STR 356 (Tri.-

Kolkatta)], wherein it was observed that ""mutual exclusivity as per Constitution of India between taxability of sale of goods charged to sales

tax by the State and excise duty on manufactured goods and tax on services both levied by the Centre.

4. We have considered the contentions of both sides. We find that it is not in dispute that whatever amount was received by the appellant was passed

on the customers as incentive. Indeed the Commissioner (Appeals) recorded the fact that the entire component of sales incentive received had been

passed on to the customers. Further, the respondent's appeal was allowed by the Commissioner (Appeals) on the ground of time bar also observing

that the facts were in the knowledge of the Department by 05.12.2006. GEST AT in the cases of CST, Mumbai-I Vs. Sai Service Station [2014 (35)

STR 625 ((Tri. - Mumbai)] and Pratap Singh & Sons Vs. CCE, Mumbai-I [2007 (5) STR 389 (Tri. - Mumbai)] has held that similar activities by

automobile dealers do not amount to rendition of BAS.

5. In the light of the foregoing, we do not find any merit in this appeal and the same is rejected.