(2015) 12 CESTAT CK 0006

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 594 Of 2009

D.D. Motors APPELLANT

Vs

CST, Delhi RESPONDENT

Date of Decision : 04-12-2015

Acts Referred:
Finance Act, 1994 — Section 65(19), 77, 78

Citation : (2015) 12 CESTAT CK 0006

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

Bench : Division Bench

Advocate : S.K. Pahwa, Rohan Pahwa, Satyavir Singh

Final Decision : Allowed

Judgement

1. Appeal is filed against order in original dated 29.04.2009 in terms of which service tax demand of Rs.1,06,49,804/- for the period July 2003 to

March 2005 was confirmed along with interes; penalties under Sections 77 and 78 of the Finance Act 1994 were also imposed. The impugned demand

was confirmed under Business Auxiliary Service (Section 65(19) ibid.) because the appellant provided service as direct selling agent/direct marketing

agent for banks such as ICICI bank, HDFC bank, Citibank and non-banking financial companies such as Maruti Finance etc. but did not pay service

tax in respect thereof.

2. The appellant contended that:

(i) The service provided by it did not fall under business auxiliary service.

(ii) It was under bona fide belief that the service rendered by it was not liable to service tax.

(iii) The cum tax benefit has not been extended, and

(iv) The option for reduced penalty under section 78 has not been extended.

3. We have considered the contention of the appellant and have also perused the records. It is evident from the service provider agreement that the

appellant was to interalia, identify eligible customers for granting loans keeping in mind the eligibility criteria notified by the bank/financial institutions. It

was also to provide certain services for and on behalf of banks/financial institutions, explain the terms and conditions of the loan, undertake with the

consent of the bank/financial institution the responsibility of advertising and distribute advertising material of the banks/financial institutions and adhere

to all marketing and branding guidelines given by the banks/financial institutions. It is thus evident that the service rendered by the appellant clearly fell

under limb (ii) / (vi) of the definition of business auxiliary service given in Section 65(19) ibid. Indeed the service provided by the appellant so clearly

fell under the said definition that there was no scope for any ambiguity or confusion regarding the taxability thereof. Bona fide belief is not some

hallucinatory belief; it is belief of a reasonable person operating in an appropriate environment. Thus the contention of the appellant that it was under

the bona fide belief that the service rendered by it was not taxable is totally untenable. However there is force in the contention of the appellant that

cum tax benefit and benefit of reduced penalty under Section 78 should have been extended to it. We find that the benefit of reduced (25% of the

demand confirmed) penalty under Section 78 has not been expressly extended by the lower authorities. Therefore following the ratio of Gujarat High

Court judgement in the case of Ratna mani Metals and Tubes Vs. CCE- 2013 - TIOL - 1124 - HC - AHM - CX such benefit can be granted at the

level of CEST AT also.

4. In the light of the foregoing analysis, we allow the appeal by way of remand to the primary adjudicating authority for de novo adjudication with the

direction that:

(1) The cum tax benefit should be extended to the appellant and the impugned demand should be recomputed accordingly.

(2) The benefit of reduced penalty under section 78 should be extended to the appellant subject to the condition that the recomputed demand along

with interest and reduced (i.e. 25% of the recomputed demand) penalty is paid within 30 days of receipt of the de novo adjudication order. Needless to say that in case of default, the penalty under section 78 ibid shall be equal to the recomputed demand. The appeal is disposed of in the above terms

