(2015) 10 CESTAT CK 0025

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 1860 Of 2010

Joshi Auto Zone Pvt. Ltd — APPELLANT

Vs

Commissioner Of Central Excise Chandigarh — RESPONDENT

Date of Decision : 30-10-2015

Acts Referred:

Finance Act, 1994 — Section 65(9), 65(19)

Citation : (2015) 10 CESTAT CK 0025

Hon'ble Judges : G. Raghuram, J;C. J. Mathew, Technical Member

Bench : Division Bench

Advocate : B.L. Narasimhan, Suchitra Sharma

Final Decision : Disposed Of

Judgement

1. The appellant, M/s Joshi Auto Zone Pvt Ltd is engaged in providing 'authorised service station' and 'business auxiliary service' as defined in Section

65(9) and (19) of the Finance Act, 1994. The appellant is in receipt of incentives/ commission from M/s Maruti Udyog Limited and other finance

companies. During the period 1st July 2003 to 31st March 2005, the appellant received an amount of Rs.4,72,15,282/- while reporting a taxable value

of Rs.73,44,579/- as commission received from M/s Maruti Udyog Limited and other financial companies. Likewise for the said period the appellant

received an amount of Rs.14,40,385/- from M/s Maruti Udyog Ltd as incentives without reporting the same as a taxable value. Accordingly, the

original authority confirmed demand of short-paid amount of Rs.37,33,287/- for the said period and disallowed CENV AT credit availed to the extent

of Rs.4,77,429 on 'demo' cars claimed as capital goods. Penalties under section 76 and 78 of the Finance Act, 1994 were also imposed. This order

was challenged before the Commissioner of Central Excise & Customs (Appeals), Chandigarh - II.

2. Vide the impugned order 133/CE/CHAND-I/2010 dated 1t0h September 2010, the first appellate authority reduced the total demand to

Rs.10,04,929/- (inclusive of the wrongly availed CENV AT credit) with interest thereon and while upholding the imposition of penalty under section 76,

reduced the penalty under section 78 to Rs.10,04,929/-. The specific receipts that were held to be taxable were the commission or remuneration from

finance companies (other than Maruti Finance who had discharged the tax liability) and insurance companies, as well as processing fees and

incentives received by the executives of the appellant from finance companies.

3. Heard the rival submissions. Our attention was drawn to the decision of a Larger Bench of this Tribunal in Pagariya Auto Center v Commissioner

of Central Excise, Aurangabad [2014 (33) STR 506 (Tri-LB) which has held that consideration for allocation of table space for accommodation of

representative of financial institutions in the premises of automobile dealer do not fall within the ambit of 'business auxiliary service'. The Larger

Bench has held that the nature of the transactions to the extent that it was not limited to providing) 'table space; would determine the leviability under

the head of 'business auxiliary service.' It is seen that the records do not indicate that the claim of the appellant that they are mere provider of 'table

space' and that these receipts are in the nature of consideration for such allocation can be controverted. Therefore, the tax levied on such

remuneration is liable to be set aside.

4. The commission paid through the appellant to their executives is, admittedly, remuneration for the efforts made by the employees of the appellant to

promote the products of the finance companies. Admittedly, they are employees of the appellant and, thereby, not free agents. Their promotional

efforts cannot be delinked from that of the appellant; the fact that payments are made over to the appellant is sufficient to deduce so. That the

appellant chooses not to retain any of the commission and instead passes them on to the executives is an internal policy of the appellant that need not

concern the tax authority. Processing fees are the consideration for handling the loan applications and it is, undoubtedly, incidental to promotion of the

service that is offered by the finance companies. Having made the claim that receipts on account of table space is not taxable and that claim having been accepted, it stands to reason, and within the coverage of the decision of this Tribunal in re Pagariya Auto Centre, that the dividing line between

taxability and non-taxability lies in the nature of the transactions. The commission and processing foes can be inferred to be the remuneration for

rendering services within the meaning of section 65(19) of Finance Act, 1994.

5. Accordingly, the impugned order is modified to the extent of setting aside the demand of Rs.4,00,992/- on commission / remuneration received by

the appellant from the financial companies. It is seen that the CENV AT credit taken on demo cars has been reversed by deposit of like amount on

29th March 2006. The availing of credit does appear to have its genesis in the mistaken impression of eligibility. We are of the opinion that imposition

of penalty for this mistake would be unduly harsh. Penalty is restricted to that tax demand of Rs.1,26,508 that survives. Penalties imposed also stands

reduced to Rs.1,26,508.

6. Appeal is accordingly disposed off.

(Pronounced in Court)

