CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70215 of 2016

(Arising out of Order-in-Appeal No NOI-SVTAX-000-APPEALS-I-358-2015-16, dated-30/11/2015 passed by Commissioner (Appeals-I) Central Excise, Meerut)

M/s Rohan Motors Ltd. **.....Appellant**
(63-A, Udyog Vihar
Greater Noida
UP 201301)

VERSUS

Commissioner, Service Tax, Noida **....Respondent**
(C-56/42, Renu Tower
Sector-62, Noida)

WITH

Service Tax Appeal No.70229 of 2016

(Arising out of Order-in-Appeal No NOI-SVTAX-000-APPEALS-I-365-2015-16, dated-30/11/2015 passed by Commissioner (Appeals-I) Central Excise, Meerut)

M/s Rohan Motors Ltd. **.....Appellant**
(63-A, Udyog Vihar
Greater Noida
UP 201301)

VERSUS

Commissioner, Service Tax, Noida **....Respondent**
(C-56/42, Renu Tower
Sector-62, Noida)

APPEARANCE:
Shri Atul Gupta, Advocate for the Appellant
Shri Manish Raj, Authorized Representative for the Respondent

CORAM: **HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.-70516-70517/2024

DATE OF HEARING : 06.08.2024
DATE OF DECISION : 06.08.2024

SANJIV SRIVASTAVA:

These appeals are directed against the Order-In-Appeal as indicated in the table below passed by Commissioner (Appeals-I) Central Excise, Meerut:-

Appeal No.	Order-In-Appeal No.	Date
ST/70215/2016	NOI-SVTAX-000-APPEALS-I-358-2015-16	30/11/2015
ST/70229/2016	NOI-SVTAX-000-APPEALS-I-365-2015-16	30/11/2015

1.2 As the issues involved in both the appeals are common both have been taken up for consideration together.

2.1 The Appellant is an Authorized Service Station of Maruti Udyog Limited and is engaged in providing various types of services to the Purchaser of Maruti vehicles either on behalf of Maruti or on their own-shelf. They are registered under the category of 'Authorized Service Station'.

2.2 During the course of audit of the Appellant for the period from 2007-08 to March 2012 it was observed that the Appellant have received certain amounts under the category of 'Miscellaneous Income' and they have not paid any service tax in respect of such receipts. Auditors were of the view that these receipts are in relation to 'Business Auxiliary Service' provided by the Appellant and hence are liable to service tax.

2.3 A Show Cause Notice [1]dated 17.04.2013 was issued to the Appellant referring to the audit objection and asking the Appellant to show cause as to why:-

> "(i) Service tax amounting to Rs. 331775/- not paid by party during the period 2007-08 to 2011-12. should not be demanded and recovered from them by invoking

[1] SCN

extended period under proviso to Section 73(1) of the Finance Act 1994. along with Interest under Section 75 of the Finance Act. 1994.

(ii) Penalty should not be imposed upon them under Section 77& 78 of Finance Act, 1994."

2.4 Subsequently another SCN dated 21.11.2013 was issued on the same ground for the period 2012-13.

2.5 Both the SCNs have been adjudicated by the Original Authority vide Order-In-Original No 11/AC/NOIDA-V/2014-15 dated 19.03.2015 & 12/AC/NOIDA-V/2014-15 dated 19.03.2015.

2.6 Aggrieved Appellant filed appeals before the Commissioner (Appeals) which have been dismissed as per the impugned orders.

2.7 Hence the present appeals.

3.1 We have heard Shri Atul Gupta, learned advocate appearing on behalf of the Appellant and Shri Manish Raj, learned Authorized Representative for the Revenue.

4.1 We have considered the impugned order along with the submissions made in the appeal and during the course of argument.

4.2 From the perusal of the SCN and the order of the Original Authority and Appellate Authority we find that the demand has been made by referring to certain incomes reflected in the ledger of the Appellant. However, show cause do not specify the source of income i.e. the person who has made these payments to the Appellant i.e. demand stands made without specifying the service recipient. For the period prior to 2012 taxable service for business auxiliary service was defined as under:-

"Taxable service means any service provided or to be provided to a client. by any person in relation to business auxiliary service"

The definition itself contemplates that service should be provided to an identified client and consideration should have been received from the said client or on his behalf. In the absence of such an identification at any stage of proceeding the demand made under this category cannot be upheld.

4.3 Similarly after w.e.f. 01.07.2017 service have been defined as 65B(44) of the Finance Act as under:-

"(44) "Service" means any activity carried out by a **person for another** for consideration, and includes a declared service, but shall not include—

…..

This definition also entails that to qualify as service the same should have been provided to an identified person for a consideration. As no such identity of the client has been established we cannot call these amounts for specific services provided. Similar view has been expressed by the tribunal in following cases:

A Deltax Enterprises [2018 (10) G.S.T.L. 392 (Tri.-Del.)]

"4. Admittedly, the appellant did not maintain detailed accounts for all the transactions undertaken by them. They have availed the provision of Section 44 AD of Income Tax Act for filing returns. This formed basis for service tax demand as the income shown is much higher than the declared consideration for taxable service. We note that the appellants categorically asserted that they did not provide any other service other than those, the details of which have been submitted to the lower authorities. ***The Revenue also could not point out excess receipt on these contracts or the taxable service which gave them the consideration escaping the tax. In the absence of specific allegation with reference to the nature of service or the service recipient it is not tenable to hold an income of the appellant even if it is admitted to be an actual income, as consideration for a taxable service. The minimum requirement to tax an***

assessee for service tax is to identify the nature of their taxable service alongwith the recipient of such service. In the present case all identified contracts for the identified service recipients have been examined and concluded by the lower authority. No service tax liability can be fastened on unidentified service for unidentified service recipient. *There is no provision for such summary assumption even under Section 72 of the Finance Act, 1994. Admittedly, the said section provides for arriving at the taxable value to be based of the Assessing Officer's best judgment in case where the appellant fails to furnish return under Section 70 or fails to assess the tax in accordance with Finance Act, 1994. In the present case the appellants did file returns under Section 70 and also made available all the contracts on which service tax liability will arise for them. As such, we find application of Section 72 cannot be extended based solely on the income tax return without identifying the specific taxable service or service recipient."*

B. The Madhya Pradesh State Mining, Corporation Limited [2023 (4) TMI 1075 (Tri.-Del.)]

"24. It is not possible to sustain this view. For a service to be taxable, it is necessary that there should exists a service provider and service recipient relationship between the two parties. On a careful perusal of order dated 30.12.1996 issued by the State Government, it is apparent that the appellant was made entitled to 30% of the area development charges received by the State Government. These charges were paid to the appellant for meeting its administrative expenses, especially since the appellant is operating as a public sector undertaking of the State Government. There is no mention of any service which would be performed by the appellant in exchange of such amount. Thus, allocation of area development charges by the State Government can be regarded as income of the appellant, but it cannot be treated as consideration towards a service."

C. Harini Colours [Final Order No.70044/2024 dated 11.01.2024 in Service Tax Appeal No.42480 of 2014].

"5. In regard to 'Business Auxiliary Service' and 'Technical Inspection and Certification Service', the contention of the appellant is that the appellant has made certain deductions in the invoices raised to M/s.Bonprix, Germany, which are only discounts in a transaction of sale. M/s.JPS Trading, Dubai arranges for procuring the goods from the appellant to M/s.Bonprix, Germany. M/s.JPS Trading conducts quality test for export of the garments through their agent (Fashion Force, Tiruppur) situated in India. It is thus assumed by the department that the deductions made in the invoice price is towards commission and towards furtherance

of business of the appellant rendered by M/s.JPS Trading, Dubai to the appellant and also for the quality test done through M/s.Fashion Force, situated in India. It requires to be stated that the SCN is not clear as to who is the service recipient and who is the service provider. So also, it does not bring out clear picture of the consideration that is passed from the service provider to the service recipient. It is brought out from evidence that garments are sold by the appellant to M/s.Bonprix, Germany. M/s.JPS Trading, Dubai has played a role of middleman in making arrangements. The quality test is done by M/s.Fashion Force in India. According to the department, it is an agent of M/s.JPS Trading, Dubai. However, there is no payment made by the appellant to M/s.Fashion Force. We therefore do not understand how there would be a service rendered by M/s.Bonprix, Germany to the appellant so as to be taxable under reverse charge mechanism. Even if there was any service rendered in regard to quality checking, the demand ought to have been raised against M/s.Fashion Force, who is the service provider for quality checking. If the department is of the view that Fashion Force, Tiruppur is the branch office of JPS Trading, Dubai then it would be M/s.Fashion Force, Tiruppur who is liable to pay service tax. It cannot be said that the deductions made in the invoices raised in the name of M/s.Bonprix, Germany is a payment made to Fashion Force, Tiruppur. For these reasons, we find that the demand raised under 'BAS', 'Technical Inspection and Certification Service' is without any factual or legal basis and requires to be set aside which we hereby do. The issue on merits is answered in favour of the appellant and against the Revenue."

4.4 In the appellants own case Delhi bench has vide order reported at [2018-TIOL-2860-CESTAT-DEL] held as follows:

"5. Revenue has ordered for payment of Service Tax under various receipts recorded under miscellaneous income. These include loading/unloading charges, Pollution Check-up charges, penalty-cum processing charges etc. It is obvious that these amounts have been received not towards provision of any service on behalf of MUL or anybody else. Consequently, there is no justification for levying Service Tax under BAS."

4.5 In view of the above discussion we do not find any merits in the impugned order though in both the order the Commissioner (Appeals) very strenuously tried to establish that these services are finally going to benefit Maruti Udyog Ltd. We do not find any merit in the same arguments. In the absence of any such agreement to provide specific service between the

appellant and Maruti Udyog Limited we do not find any merits in the findings so recorded by the Commissioner (Appeals).

5.1 Accordingly, impugned order is set aside and appeal is allowed.

(Dictated and pronounced in open court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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