2012 (25) S.T.R. 68 (Tri. - Del.)

IN THE CESTAT, PRINCIPAL BENCH, NEW DELHI

[COURT NO. III]

Ms. Archana Wadhwa, Member (J) and Shri Mathew John, Member (T)

EM PEE MOTORS LTD.

Versus

COMMISSIONER OF CENTRAL EXCISE, CHANDIGARH

Final Order No. ST/412/2011(PB), dated 26-8-2011 in Appeal No. ST/665/2007

REPRESENTED BY :Shri K.K. Anand, Advocate, for the Appellant.

Shri Sonal Bajaj, SDR, for the Respondent.

[Order per : Mathew John, Member (T)]. - The appellant provided services of Authorized Service Station and Business Auxiliary Services. During the period 2003-04 to 2004-05, they had acted as agent for promoting vehicle loans provided by ICICI Bank for which the Bank paid them commission. Out of the commission paid by the Bank to the appellant, they were in fact paying some amount to the loan seekers as an incentive for taking the loan through them. This amount is hereinafter referred to as 'subvention'. While paying service tax for amounts received as commission from the bank, the appellant deducted the amounts of subventions from the amount received from the bank and paid service tax only on the remaining portion of the commission. The Revenue made out a case that they should have paid tax on the full amount received from the bank and issued a show cause notice to the appellant demanding tax which was short paid. The show cause notice was adjudicated confirming the demand. The party filed an appeal with the Commissioner (Appeals) who dismissed the appeal filed by the appellant. Aggrieved by order of the Commissioner (Appeals), the appellant is before the Tribunal.

2. The appellant submits that the amount of subvention was directly paid by the bank to the customer taking loans and they had never received the amount. Therefore, no tax can be demanded on such amount which was not received by them. They concede that their books of account showed receipt of total amount of commission and the amount paid by the bank to the customer from such account is shown as payments in their books of account. The contention of the appellant is that this procedure was followed because the banks were under obligation to deduct TDS (Tax Deducted at Source) under Income-tax Act and they were not willing to issue TDS certificates for different individuals and that is the only reason why the amounts were reflected in their books of account. It is the contention that they should not be charged service tax on any amount which they have not received.

3. The learned DR on the other hand, submits that service tax is payable on the gross value of the services rendered by the appellant. The fact that the appellant chose to make a payment out of such value realized by him from the receiver of the services cannot alter the 'gross amount charged' and service tax should be paid on the gross amount paid by the bank and reflected as receipts in the books of accounts of the appellant.

4. Considered arguments of both sides. It is very clear that as per Section 67 of Finance Act, 1994 service tax shall be paid on the gross amount charged by the service provider. It is also noticed that as per the submission of the

appellant, the TDS certificate was issued by the Bank in the name of the appellant for deduction of income tax on the full amount paid to the appellant. This means that while filing income-tax return, he is taking the credit for entire TDS including the amount deducted on account of payments directly made to the customers. Therefore, this is an arrangement where the appellant decided to get the benefit of deduction of TDS for the whole amount for income tax purpose but to pay service tax only on the amount net of subvention. Thus there is a inherent contradiction in the stand that is being taken by the appellant before the two tax authorities. The arrangement made for the purpose of reducing incidence of income-tax is not a subject matter of these proceedings.

5. We are of the view that the amount paid by the bank for the services rendered by the appellant and reflected as receipts in the books of accounts of the appellant, should be subjected to service tax and therefore, the orders passed by the lower authorities is maintainable and thus appeal filed by the appellant is rejected.

(Order pronounced on 26-8-2011)

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