

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO.III

Service Tax Appeal No.526 of 2012

(Arising out of Order-in-Appeal No.CMB-CEX APP 101/12 dated 21.05.2012 passed by
Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore – 641 018)

M/s. T.A.F.E Access Ltd.,

1601, Trichy Road,
Ramanathapuram,
Coimbatore – 641 018.

... Appellant

Versus

Commissioner of GST & Central Excise,

Coimbatore Commissionerate,
6/7, A.T.D. Street, Race Course Road,
Coimbatore – 641 018.

... Respondent

APPEARANCE:

For the Appellant : Mr. N. Viswanathan, Advocate
For the Respondent : Ms. Sridevi Taritla, ADC (A.R)

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 23.05.2023

DATE OF PRONOUNCEMENT: 26.05.2023

FINAL ORDER No.40342/2023

Order : Per Ms. Sulekha Beevi C.S.

Brief facts are that the appellants are authorised dealers of M/s. TATA Motors and are engaged in selling passenger cars and also provide free services to their customers during warranty period. The expenses incurred by them for providing such free services are reimbursed by the

manufactures namely M/s. TATA Motors. While discharging service tax, the appellant paid service tax only on the labour charges portion and did not include the cost of materials/spares which was reimbursed by M/s. TATA Motors. The Department was of the view that the appellant has to include the cost of the spares/materials used for providing the free services. Show cause notice was issued proposing to demand service tax along with interest and also for imposing penalties. After due process of law, the original authority confirmed the demand along with interest and imposed penalty under Section 78 of the Finance Act, 1944. Aggrieved by such order the appellant preferred an appeal before the Commissioner (Appeals) who vide order impugned herein, upheld the order passed by the adjudicating authority. Hence the appellant is now before the Tribunal.

2. The learned counsel Shri N. Viswanathan appeared and argued on behalf of the appellant. The appellant being an authorized dealer for the sale of Tata motor cars was also undertaking servicing of Tata Motor cars. As per the arrangement with the manufacturer, namely, TATA Motors, they are obliged to provide three free services during the warranty period for the cars sold by them. The cost of said free services provided during the warranty period was not charged on the buyers but was reimbursed to them by TATA Motors. On the value of the reimbursed labor charges, the appellant paid service tax in respect of which there is no dispute. However the Department has taken the view that the appellant has to include in the taxable value, the value of the parts and spares used for these free services which is also reimbursed by

manufacturer. As an authorized dealer, the appellant stocks, the spares and accessories of TATA Motor cars and use the same as required by the customers either during service or during the free warranty services. It is thus sold to the customers. During such sale they paid VAT on the spares and accessories. The transaction of selling the spares/accessories is out of the levy of service tax as there is no service provided. The Department has erroneously raised the demand holding that the appellant has to pay service tax on the reimbursements received from the manufacturer towards supply of parts and accessories used during the free warranty service alleging that the spares/parts are inputs and these are consumed while providing services. During free services the appellant provides the spares and accessories free of cost to the customer which is later reimbursed by the manufacturer. Being reimbursable expenses the same cannot be subjected to levy of service tax.

3. It is submitted by the learned counsel that the issue is covered by the decision of the Tribunal in the appellant's own case for the subsequent period *vide* Final Order No.40394-394/2019. The Tribunal in the said decision had followed the decision of the Tribunal in the case of M/s. ABT Ltd. and others Vs. Commissioner of Central Excise, Coimbatore decided *vide* Final Order No.40618-40628/2018 dated 14.03.2018.

4. The learned counsel argued on the ground of limitation also. It is submitted that the period involved is from October 2004 to September 2009 and the show cause notice has been issued only on 19.04.2010

invoking the extended period. Apart from a bald allegation that the appellant has suppressed facts with intent to evade payment of tax there is no evidence produced by the Department to establish that the appellant has suppressed facts. The appellant being an authorized dealer of the manufacturer, the transactions were properly accounted and the demand has been raised on the basis of the figures available in the records of the appellant. As such there is no suppression of the facts to invoke extended period. Learned counsel prayed that the appeal may be allowed.

5. Learned AR Ms. Sridevi Taritla supported the findings in the impugned order.

6. Heard both sides.

7. The issue that arises for consideration is whether the cost of spares and accessories reimbursed for free services provided during the warranty period has to be included in the taxable value or not.

8. The department has relied upon Rule 5 (1) service tax (determination of value 2006) which reads "wherein expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable services provided or to be provided and shall be included in the value for the purpose of charging service tax on the said notification". This Rule was under consideration before the

Honorable Supreme Court in the case of *Union of India Vs Intercontinental Consultants and Technocrats Pvt. Ltd.* 2018 (10) GSTL-401 (SC) and it was held that reimbursable expenses cannot be included in the taxable value. The period involved is prior to the amendment of Section 67 of the Finance Act, 1994. The very same issue as to whether the cost of spares and material used for free services during warranty period has to be included in the taxable value or not was considered by the Tribunal in the case of *M/s. ABT Ltd. and others Vs. Commissioner of Central Excise, Coimbatore* vide Final Order No.40618-40628/2018 decided on 14.03.2018. The relevant paragraphs are produced as under:

"2. *M/s. Sree Saradhambal Automobiles Pvt. Ltd. as well as M/s. ABT Ltd. are the authorized dealers for M/s. Maruti Suzuki India Ltd. M/s. Chandra Automobiles India P. Ltd. is the dealer for M/s. Hyundai Motor India Pvt. Ltd. These authorized dealers carry out the work of authorized service station on behalf of the manufacturers during the warranty period. In those cases, where the buyers of the vehicles have opted for extended warranty, such services are also rendered by these dealers. In respect of services rendered during warranty period, the cost and spares used in replacement during such services are reimbursed by the manufacturers of the motor vehicles. In respect of the extended warranty service also the cost of such spares as well as labour is reimbursed to the dealers by the manufacturers of motor vehicles. The extended warranty premium is collected from those buyers of vehicles who opt for by these dealers and they are remitted to the respective manufacturers. In the above factual scenario, the department issued show cause notice and confirmed demand of service tax on the amounts received by the dealers from the manufacturers of motor vehicles towards the cost of spares used in replacement during the warranty and extended warranty service. Further, the extended warranty premium recovered by the dealers from the buyers of vehicles for onward transmission to the manufacturers of motor vehicles were also considered as reimbursement of the cost of spares used in rendering the extended warranty premium in respect of M/s. ABT Ltd. The service tax demands stand challenged before us in the present appeals.*

3. *With the above background, we have heard Shri S. Durairaj representing all the appellants. He submitted that the cost of spares used during the warranty and extended warranty is no doubt reimbursed to the dealers. However, such spares are sold by these*

dealers on payment of VAT and hence there is no justification to include such amounts for payment of service tax. In addition, he submitted that the extended warranty premium recovered by the authorized dealers have been remitted to the manufacturers of motor vehicles and on such premium, the manufacturers of motor vehicles have paid appropriate service tax. The Revenue is not justified in considering such amounts as reimbursement of cost of spares.

4. The Ld. AR justified the impugned orders. He submitted that the manufacturers of motor vehicles have reimbursed the cost of rendering warranty as well as extended warranty service on which service tax is liable to be paid by the authorized dealers.

5. After considering the submissions made by both sides as well as perusal of records, we find that the service tax demand has been raised by Revenue on the cost of spare parts used while rendering the warranty as well as extended warranty service. After a perusal of some of the sample invoices raised for such work, we note that the spare parts have in fact been sold on payment of VAT. Consequently, we are of the view that the cost of spare parts cannot be included for purposes of levy of service tax. Such demand of service tax is not justified and hence are set aside."

10. In the appellant's own case the very same issue was decided for the subsequent periods *vide* Final Order No.40394-40397/2019 dated 28.02.2019.

"2. The common issue in these appeals pertains to replacement of spare parts by the manufacturer in lieu of the same replaced by the appellant during free warranty service. The Id. Counsel places reliance on the ratio of the Hon'ble Supreme Court in the case of Union of India Vs. Intercontinental Consultants and Technocrats Pvt. Ltd. - 2018 (10) GSTL 401 (SC) and also submits that the very same issue has been decided by this Bench vide Final Order Nos. 40618 to 40628/2018 dated 14.3.2018 in the case of ABT Ltd. Vs. Ors. Vs. Commissioner of Central Excise, Coimbatore wherein the issue has been decided in favour of the appellants therein.

2. On the other hand Ld. AR Shri B. Balamurugan supported the findings in the impugned order.

3. After hearing both sides, we find that the Id. counsel is correct in his assertion. The matter is indeed covered not only by the ratio of the Apex Court in Intercontinental Consultants and Technocrats Pvt. Ltd. (supra) but also by the decision of this Tribunal in the case cited above. In view thereof, we find favour with the appellant. The impugned orders to the contrary are then required to be set aside, which we hereby do. The appeals are allowed with consequential relief, if any, as per law."

11. After appreciating the facts and also applying the decision in the appellant's own case we hold that the demand cannot sustain. In the result, the impugned order is set aside. The appeal is allowed with consequential reliefs, if any, as per law.

(Order pronounced in the open court on 26.05.2023)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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