2026 INSC 892

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No.7947 of 2013

M/S TVS MOTOR COMPANY LIMITED

.... APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE, CHENNAI-III

.... RESPONDENT

J U D G M E N T

K. VINOD CHANDRAN, J.

Two questions arise in this appeal, first, whether the 'referral charges'; obtained by the appellant, a dealer in automobiles, are taxable under Section 65 (105) (zzb) of Chapter V of the Finance Act, 1994 as Business Auxiliary Service. The appellant obtains these charges, for the loans availed and the insurance policies taken out, with the junction of the appellant. The second question is as to whether in the facts and circumstances of the case, the appellant had suppressed the turnover, thus enabling the Department to invoke the extended limitation period for issuing notice.

2. Ms. Charanya Lakshmikumaran, learned Counsel appearing on behalf of the appellant argued that the assessee/appellant had paid up the entire liability prior to issuance of notice, which absolves them from penalty as provided under sub-section (3) of Section 73 of the Finance Act. There was confusion insofar as determination of the taxable services, the various Tribunals having held differently, which matter was settled finally in ***M/s. Pagaria Auto Center v. Commissioner of Central Excise, Aurangabad***[1].

3. Ms. Nisha Bagchi learned Senior Counsel appearing for the Department, on the other hand, pointed out that the assessee had purposefully shown the referral charges received by it as 'miscellaneous income', which was a clear act of suppression. The provisions of the Finance Act, 1994 was known to them and there is no escape from the taxable income, especially since they were taking commission in the form of referral charges, for the clients they referred to the banks and the insurance company, from whom loans were availed and insurance policy

[1] 2014 (33) S.T.R. 506 (Tri. – LB)

taken out. The penalty imposed is quite in tune with the provisions of the Act.

4. The Tribunal has dealt with issue of taxability elaborately in the impugned judgment. Looking at the agreements entered into with the banks; namely HDFC Bank & ICICI Bank, and the Oriental Insurance Company, the referral charges obtained from the banks and the insurance company, on the customers of the assessee taking out insurance policies and availing motor vehicle loans from the said institutions definitely is a Business Auxiliary Service. The assessee is promoting the business of the banks and the insurance company for which they receive an amount as stipulated in the agreement.

5. We specifically notice the larger bench of the Tribunal having found so with respect to the assessee:

> *"16. In TVS Motor Co. Ltd. (supra), the analysis of facts revealed that the assessee was providing services to banks and insurance companies and was receiving referral charges for the same. On analysis of the relevant transactional documents on record the Tribunal concluded that the agreements revealed close association of the assessee with banks/financial institutions for promotion and*

marketing of banking and financial services; that a nexus of the service provided by the assessees as input for providing the output of banking and financial services is also revealed; that under the agreements, the assessee was required to inform its dealers and authorized service centres about the arrangement with the financial institutions and the buyers of vehicles must also be informed about availability of financial facilities. The dealers and authorized service centres of the assessee were also required to sensitise customers about the lending facilities offered by financial institutions. On a conspectus of the revealed factual situation, the Tribunal concluded that the assessee was promoting and marketing the services of banks and insurance companies, was a link in the economic activity carried on by them and was therefore providing the taxable BAS."

6. Insofar as penalty is concerned, the show cause notice was issued on 02.04.2008 before which the tax liability was satisfied by deposit of Rs.1,81,560/- on 31.03.2005, Rs.1,02,07,017/- on 04.11.2006, Rs.19,27,172/- on 21.02.2007 and Rs.23,86,085/- on 30.03.2007, before the issuance of show cause notice. Sub-section (3) of Section 73 mandates that if there is short levy or a short payment of tax, then if prior to notice issued, the tax liability is satisfied, the department would desist from issuing a show cause notice. There was some confusion insofar as liability and hence the assessee had not disclosed the income generated from the referral charges as Business Auxiliary Service in the service tax returns filed. The period under consideration was 2003-2004 to 2006-2007 and even if the notice can be issued within the extended period, the satisfaction of the liability prior to issuance of notice would commend us to set aside the penalty imposed. We see from the order of the Tribunal that penalty under Section 76 imposed was set aside by the Tribunal and we direct that the penalty under Section 78 also be set aside.

7. The appeal stands partly allowed.

8. Pending application(s), if any, shall stand disposed of.

.... J.
(J. B. PARDIWALA)

.... J.
(K. VINOD CHANDRAN)

NEW DELHI;
AUGUST 19, 2026.