

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

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 40074 of 2014

(Arising out of Order-in-Appeal No. 156/2013 (M-III) ST dated 02.12.2013 passed by the Commissioner of Central Excise (Appeals), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. Surin Automotive Private Limited

: Appellant

No. 5, GST Road,
Guduvanchery, Chennai – 602 303

VERSUS

Commissioner of Central Excise and Service Tax

: Respondent

Mahatma Gandhi Marg, Nungambakkam,
Chennai – 600 034

APPEARANCE:

Shri M.N. Bharathi, Advocate for the Appellant

Smt. Anandalakshmi Ganeshram, Superintendent for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 40652 / 2023

DATE OF HEARING: 19.07.2023

DATE OF DECISION: 04.08.2023

Order : [Per Hon'ble Mr. P. Dinesha]

Brief facts, as could be gathered from the orders of lower authorities and other relevant documents placed on record, are that the appellant is a registered service provider for Goods Transport Operator Service. The balance sheet of the appellant appears to have revealed the receipt of Rs.9,91,954/- and Rs.4,42,174/- for the periods 2007-08 and 2008-09 respectively.

2. Upon enquiry, the Department appears to have found that the appellant was making payments to their suppliers only after sixty days and if the supplier wanted earlier payment, 5% of the value of the bill was deducted by the appellant, which was shown in the appellant's balance sheet as income under "Bill discount".

3. From the above, the Revenue entertained a doubt that the appellant did render service within the meaning of Section 65(12)(a)(ix) read with Section 65(105)(zm) of the Finance Act, 1994 and thus, a Show Cause Notice dated 19.06.2009 was issued proposing to demand Service Tax under 'banking and other financial services'.

4. The appellant appears to have filed a reply dated 04.08.2009 whereby they appear to have denied rendering any service under 'banking and other financial services'.

5. However, in adjudication, the Deputy Commissioner of Central Excise, Tambaram-adjudicating authority proceeded to confirm the demand as proposed in the Show Cause Notice vide Order-in-Original No. 02/2011 dated 27.01.2011.

6. Feeling aggrieved by the above demand, it appears that the appellant filed an appeal before the first appellate authority, but however, the first appellate authority also having dismissed their appeal vide impugned Order-in-Appeal No. 156/2013 (M-III) ST dated 02.12.2013, the present appeal has been filed before this forum.

7. Heard Shri M.N. Bharathi, Ld. Advocate for the appellant and Smt. Anandalakshmi Ganeshram, Ld. Superintendent for the Revenue. Ld. Advocate has also filed written submission during the course of arguments.

8.1 The contentions of the Ld. Advocate are summarized as under: -

- Granting of discount was in the course of trade which was relating to the sale of goods and not a service activity as such.
- The bill discounting was essentially for the buyer to avail the facility of discount granted by the seller, who is the service provider; but however, in the case on hand, the transaction between the seller and the buyer being a commercial transaction, which is an activity of trading / sale, is not a 'service' and hence, there was no taxability.
- The lower authority does not specifically spell out as to how the service is involved in a bill discounting scheme.
- In a bill discounting scheme, there is no service by the seller to the buyer nor is there any service by the buyer to the seller and therefore, neither the seller nor the buyer could be the service provider or service receiver.
- The appellant is not initiating the bill discounting scheme as a service provider as contemplated under Section 65(12)(a)(ix) *ibid.* since no consideration was received by them.
- The appellant had only availed the facility of discount against prompt payment, which is a direct facility given to the appellants as buyers in terms of the purchase orders.

8.2 Thus, the Ld. Advocate prays for setting aside of the impugned order and the consequential demand raised against the appellant.

9.1 *Per contra*, Ld. Superintendent supported the findings of the lower authorities. She would also invite our attention to the definition of 'banking and other financial services' to contend that the scope of the said service covers even bill discounting facility.

9.2 She would also rely on an order of the co-ordinate Delhi Bench of the CESTAT in the case of *M/s. Hind Filters Ltd. v. Commissioner of Central Excise, Indore [2017 (51) S.T.R. 70 (Tri. – Del.)]*

10. We have heard the rival contentions, we have gone through the documents placed before us and we have also gone through the order relied upon during the course of arguments.

11. Upon hearing, we find that the only issue that is to be decided by us is: whether the nature of activity rendered by the appellant was amenable to Service Tax under the category of 'banking and other financial services' within the meaning of Section 65(12)(a)(ix) *ibid.*?

12. Section 65(12)(a)(ix) of the Finance Act, 1994, which defines the service, reads as under: -

"Section 65. Definitions. — In this Chapter, unless the context otherwise requires, -

....

(12) "banking and other financial services" means —

(a) the following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate [or commercial concern], namely :—

(i) ...

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(ix) other financial services, namely, lending, issue of pay order, demand draft, cheque, letter of credit and bill of exchange, transfer of money including telegraphic transfer, mail transfer and electronic transfer, providing bank guarantee, overdraft facility, bill discounting facility, safe deposit locker, safe vaults; operation of bank accounts;"

13.1 The transaction/activity, as explained by the appellant in its reply to the Show Cause Notice is that: -

"... discounts granted to the buyer as per the bill discounting scheme are in the nature of cash discounts or prompt payment discounts.

These discounts granted by the sellers enable buyers to honour the Bills early to avail of reduction in price. They are not any consideration for rendering any service towards 'sales promotion' or any 'business' of the seller.

...

The transaction between buyer and sellers are on principal to principal basis. In fact these discounts are considered as abatable elements in value for excise duty purposes at the hands of the manufacturer/seller ...

Buyers pay for the goods purchased and based upon so many factors, discounts are offered by manufacturers to promote their own sales and granting of discounts is part of marketing strategy adopted by manufacturer himself for his own self ..."

13.2 The case of the appellant, therefore, appears to be that Service Tax is payable on 'bill discounting' under banking and other financial services ('BFS' for short) only when the service is rendered by a banking company or financial institution including a non-banking financial company. They would thus contend that they are only a body corporate and not liable to pay Service Tax as they cannot be classified under the category of banking company or financial institutions.

14. From the reply to the Show Cause Notice and the contentions before us, we find that the appellant has not denied the fact of giving bill discounting facility to some of its customers, but had denied liability only on the ground that they are not a banking company or a financial institution.

15.1 From the definition of BFS reproduced *supra*, we find that sub-clause (ix) covers even 'bill discounting facility' and as such, the appellant being a limited company, is also covered under the said definition.

15.2 The definition makes it clear that such bill discounting facility could be offered not only by a banking company or a financial institution, but also a body corporate.

16. We find that our above view is supported by the decision in the case of *M/s. Hind Filters Ltd. (supra)* relied upon by the Ld. Superintendent.

17. In view of the above we do not find any justifiable reasons to interfere with the impugned order and hence, the appeal is dismissed.

(Order pronounced in the open court on **04.08.2023**)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd