



Issued in case of M/s. Susee Auto Sales & Service (P) Ltd by CESTAT, Chennai
SLP(C) No. 40619/2023 | Date: 31-07-2023

Ruling

CESTAT: No Penalty if Pending Taxes Paid Earlier to the Issuance of Show Cause Notice

Observations & Findings

M/s. Susee Auto Sales & Service Pvt. Ltd., the appellant, is an authorized service dealer for two-wheeler motor vehicles and motor cars manufactured by M/s. Bajaj Auto Ltd. and M/s. Mahindra & Mahindra, operating through their authorized service stations. The Revenue Department, the Respondent, investigated the Appellant's financial records and found that its employees were also performing tasks for the Appellant's sister company, such as managing purchase orders, logistics, accounting, and transactions. The expenses for these services were initially deducted from the sister company's accounts and later added back to the Appellant's accounts at the end of each financial period.

Starting from May 1, 2006, due to the above reasons, it was concluded that the Appellant should pay service tax for the services provided to their sister companies. The Appellant proactively paid a service tax of Rs 6,76,675, along with interest of Rs 1,83,385 even before receiving the Show Cause Notice.

The Respondent argued that, for the years 2006-2007 to 2007-2008, the services should be categorized as business auxiliary services under section 65(104)(c) of the Finance Act. The Appellant was accused of not paying service tax on the amounts collected as "Administrative and Handling Charges from the sister concerns." In response, the Respondent issued a Show Cause Notice on December 28, 2010, demanding service tax, interest, and imposing penalties. The Adjudicating Authority, in an Order, upheld the demand, interest, and levied a penalty of Rs 6,76,675.

Disagreeing with this decision, the Appellant appealed to the CESTAT, Chennai. The Appellant cited the judgment in Hospitech Management Consultants Pvt. Ltd. where CESTAT New Delhi ruled that the extended limitation period for demanding payment cannot be applied when there was no intention to evade service tax payment due to alleged suppression of facts. The question arose whether a penalty could still be imposed if the taxpayer voluntarily paid the service tax before receiving the Show Cause Notice. The CESTAT, Chennai, observed:

- Appellant's voluntary tax payment prompted need for reasonable discretion by Respondent before applying penalty.
- The precedent in Hospitech Management Consultants Pvt. Ltd. case supported the view that the extended limitation period could not apply when alleged suppression did not indicate an intent to evade service tax payment.
- "Support Services of Business or Commerce" were taxable starting May 2006, though the exact scope was unclear.
- The Appellant had paid INR 6,41,376/- for the fiscal year 2006-07 and INR 35,300/- for 2007-08 as service tax.
- The case should have been resolved under section 73 (3) of the Finance Act, as the Appellant had already paid the service tax with interest before the SCN was issued.

The CESTAT, Chennai, modified the challenged order and annulled the penalties imposed under sections 77 and 78 of the Finance Act.