

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

**Service Tax Appeal No. 51639 OF 2016**

(Arising out of Order-in-Original No. 14/Pr.COMMR/ST/IND/2016 dated 22-02-2016  
Passed by Commissioner of Customs (Appeals), New Customs House, Near IGI  
Airport, New Delhi-110037)

**M/s. MAN Trucks India Pvt. Ltd.** ..... **Appellant**  
Plot no. 3, Industrial Area, Sector -1  
Pithampur M.P.

VERSUS

**Commissioner, Central Excise,  
Customs & Service Tax, Indore** ..... **Respondent**  
P.B. no. 10, Manik Bagh Road, Manik  
Bagh Palace, Indore M.P. 452001

**APPEARANCE:**

Shri B.L. Narasimhan and Shri Samyak Jain, Advocate for the Appellant  
Shri Vivek Pandey, Authorized Representative of the Department

**CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT  
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 50461 / 2020**

**DATE OF HEARING/DECISION: 24 February, 2020**

**JUSTICE DILIP GUPTA**

1. This appeal seeks the quashing of the order dated 22 February, 2016 passed by the Principal Commissioner, Central

Excise, Indore<sup>1</sup> by which the demand of service tax amounting to Rs. 1,16,32,575/- for the period 1 April, 2009 to 30 June, 2012 has been confirmed with penalty and interest.

2. The Appellant is engaged in the business of manufacture of heavy commercial vehicles falling under Chapter 87 of the Schedule to the Central Excise Tariff Act, 1985. The Appellant had entered into an Agreement dated 12 January, 2006 with M/s Man Trucks & Bus AG, Germany<sup>2</sup> for supply of Heavy Commercial Vehicles bearing the "MAN" trademark for sale outside India. The transaction involved sale of heavy commercial vehicles by the Appellant to MAN Germany and thereafter by MAN Germany to its buyers.

3. The Appellant has placed reliance upon Article 9.2 of the Agreement to contend that the Appellant would not be responsible for the 'after sale services' in relation to the vehicles supplied by the Appellant to MAN Germany and MAN Germany alone has to arrange for the after sale services for its customers on its own account. The Appellant, therefore, contends that since the after sale services have to be provided by MAN Germany, the Appellant extended a price reduction of 500 Euros to MAN Germany on sale of each heavy commercial vehicle to MAN Germany as per Article 9.5 of the Agreement.

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1 . the Principal Commissioner

2 . MAN Germany

4. A Show Cause Notice dated 10 October 2014 was, however, issued to the Appellant demanding service tax amounting to Rs. 2,50,95,589/- on the discounts allowed by the Appellant for the period:

- (i) April 2009 to June 2012 on reverse charge basis under Section 66A of the Finance Act, 1994<sup>3</sup> under 'business auxiliary service'<sup>4</sup>; and
- (ii) July 2012 to March 2014 under Section 66(E) (e) of the Finance Act as a declared service for 'agreeing to refrain from providing warranty services'.

5. The impugned order passed by the Principal Commissioner drops the demand for the period July 2012 to March 2014 but the demand for the period April 2009 to June 2012 has been confirmed for the reason MAN Germany was rendering BAS to the Appellant by providing after sale services to the customers of vehicles on behalf of the Appellant. The relevant portion of the order passed by the Principal Commissioner is reproduced below:-

"21. From the show cause notice it is seen that the whole demand is in two parts. First for the period from 01.04.2009 to 30.06.2012 where Noticee is alleged to have received business auxiliary service from a provider located in a country other than India and the second for the period from 01.07.2012 to 31.03.2014 in respect of the declared service under Section 66E(e) of the Finance Act, 1994 from the same service provider.

22. Therefore, I am taking up the matter of demand for the period from 01.04.2009 to 30.06.2012 first. The contention of the Noticee is not with force and substance. What I perceive from the case and the relied upon documents is that MAN is working like a dealer in the foreign territory and under the agreement

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3 . the Finance Act

4 . BAS

the Noticee have given them exclusive right to market the automobiles manufactured by them. Para 9.2 of the agreement dated 01.12.2006 clearly provides that the Noticee shall not be responsible for rendering any after sale service normally rendered by a manufacturer of automobiles and MAN shall arrange for after sale services as may be required by MAN's marketing organization or MAN's designated buyers. Thus, there is a clear transfer of responsibility by the Noticee to MAN for providing after sale service and it is a common practice in the automobile market that the said after sale service includes warranty. \*\*\*\*\*

23. Coming to the demand of Service Tax for the period from 01.07.2012 to 31.03.2014 in respect of the declared service under Section 66E (e) of the Finance Act, 1994, it is observed that in para 12 (7) of the show cause notice the Noticee is alleged to have received declared services from MAN under Section 66(E) of the Finance Act, 1994 by agreeing to refrain from providing warranty services.\*\*\*\*\*

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24. In the instant case it is alleged that the Noticee has agreed to refrain from providing warranty service. Thus, going by the provisions as above, it is observed that the Noticee has provided service to MAN. Whereas as per the subject matter of the show cause notice, the Noticee has received taxable service from MAN. The show cause notice states that the Noticee has received the service from MAN but the provision quoted means that the Noticee has provided the service and both cannot be true at the same time. Further, The Noticee have not received any consideration for refraining themselves from providing warranty service. Thus, even if the Noticee is charged to have provided a taxable service, in the absence of any consideration, no Service Tax can be levied on them. Therefore, I find that the show cause notice has failed to make out any case against the Noticee for the period from 01.07.2012 to 31.03.2014 and the demand of Service Tax raised for this period cannot be sustained."

6. Shri B.L. Narasimhan learned Counsel appearing for the Appellant has made the following submissions;

- i. The provision of after sale and warranty services by MAN Germany to the end customers was in pursuance of its own obligations to such end customers and no service was rendered by MAN Germany on behalf of the Appellant;

- ii. The discount offered by the Appellant is merely an adjustment in the price of the goods sold and is not towards provision of any service by MAN Germany;
  - iii. The transaction between the Appellant and MAN Germany is in the nature of a sale transaction and not for provision of BAS;
  - iv. The extended period of limitation could not have been invoked in the facts and circumstances of the case; and
  - v. The principles of natural justice have been violated in as much as the show cause notice does not even indicate the sub-clause of section 65(19) of the Finance Act under the alleged BAS services provided by the Appellant was leviable to service tax.
7. Shri Vivek Pandey, learned Authorized Representative of the Department has, however, supported the impugned order and has contended that:
- (i) From a perusal of Article 9.5 of the Agreement it is apparent that the discount of 500 Euros is in consideration of the obligation of MAN Germany for warranty and after sale services. Thus, the said amount is paid to MAN Germany for carrying out the after sale services on behalf of the Appellant, which services would, therefore, be in the nature of BAS;
  - (ii) Since the service provider MAN Germany is located outside the territory of India and the Appellant is a recipient of service within the territory of India, it is liable to pay

service tax on a reverse charge mechanism as contemplated under section 66A of the Finance Act;

(iii) The extended period of limitation was correctly invoked and the Principal Commissioner committed no legality in holding that it would be applicable in the instant case; and

(iv) Though the show cause notice may not have mentioned a particular sub-clause of section 65(19) of the Finance Act, but since the nature of service received by the Appellant was clearly mentioned in the show cause notice, it would be clear that it was referable to sub-clause (vi) of section 65(19) of the Finance Act relating to provision of service on behalf of the client. In support of this contention reliance has been placed on a decision of the Delhi High Court in **Commissioner of Service Tax vs. ITC Ltd<sup>5</sup>**.

8. The submissions advanced by the learned Counsel for the Appellant and the learned Authorized Representative of the Department have been considered.

9. In order to appreciate the contentions, it would be appropriate to reproduce the relevant clauses of the Agreement entered into between the Appellant and MAN Germany and they are as follows:

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5. 2014 (36) S.T.R. 481 (Del.)

“ **Export Agreement**

THIS AGREEMENT MADE ON THIS 1ST DAY OF DECEMBER 2006  
BETWEEN-  
MAN Nutzfahrzeuge Aktiengesellschaft AND MAN FORCE TRUCKS PRIVATE  
LIMITED

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AND WHEREAS MAN and FORCE agreed to use their powers to organize the export business of MFTPL and MAN undertook an obligation to enter into a long term arrangement for organizing the export business and agreed to enter into a contractual arrangement with MFTPL and MFTPL agreed to sell trucks including spare parts for markets outside India exclusively to MAN.

NOW THESE PRESENTS WITNESSETH AND THE PARTIES HERETO AGREE AS FOLLOWS:

**Article 1 - Subject matter of the Agreement.**

1.1. MFTPL shall supply, exclusively to MAN, affiliates of MAN, sister concerns of MAN, or MAN's designated buyer(s), with trucks, in particular the Export Products as defined below, including Spare Parts thereof, for intended sale in markets outside India according to the provisions hereof, and MAN undertakes to purchase from MFTPL the Export Products for sale in the "Export Markets" in accordance with the provisions hereof and to sell such Export Products or have them sold in the Export Markets.

**Article 2-Legal position of MAN.**

2.1. MAN shall conclude, all transactions emanating under this present Agreement, in its own name and for its own account, MAN is not authorised to represent MFTPL in legal matters.

**Article 9- Defects, Check, retrofit and prevention.**

9.2. MFTPL shall not be responsible for rendering any after sale services, normally rendered by a manufacturer of automobiles or parts thereof, and MAN shall arrange for such services in each of the Export Markets, as may be required by MAN's marketing organizations or MAN's designated buyer(s).

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9.5. In consideration of MAN's obligations for warranty and After Sales Service, MFTPL shall allow a discount of € 500 (Euro Five Hundred only) per Export Product sold by MFTPL to MAN or its designated buyer(s). Provided that when the export prices are fixed in U.S. Dollars, the amount of discount shall be U.S.\$500 (U.S. Dollars Five Hundred only)."

10. A perusal of the aforesaid Agreement clearly shows that the Appellant had agreed to sell trucks, including spare parts for markets outside India exclusively to MAN Germany. Article 2.1 stipulates that MAN Germany shall conclude all transactions

emanating under the Agreement, in its own name and for its own account. Article 9.2 provides that the Appellant shall not be responsible for rendering any after sale services and MAN Germany shall arrange for such services in each of the export markets, as may be required by the marketing organizations of MAN Germany or the designated buyers of MAN Germany. Article 9.5 provides that in consideration for the warranty and after sale service to be provided by MAN Germany, the Appellant shall allow a discount of 500 Euros from the export product sold by Appellant to MAN Germany.

11. BAS has been defined in section 65 (19) of the Act. It as follows:-

"65 (19) "business auxiliary service" means any service in relation to -

- (i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or
- (ii) promotion or marketing of service provided by the client; or
- (iii) any customer care service provided on behalf of the client; or  
procurement of goods or services, which are inputs for the client; or  
Explanation. – For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;
- (iv) production or processing of goods for, or on behalf of, the client
- (v) provision of service on behalf of the client; or
- (vi) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent, but does not include any information technology service and any activity that amounts to "manufacture" within the meaning of clause



(f) of section 2 of the Central Excise Act, 19944 ( 1 of 1994).  
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12. The impugned order of the Principal Commissioner has made reference to sub-clause (vi), which is regarding provision of service on behalf of the client. The Principal Commissioner has in the impugned order stated that for the period of 1 April 2009 to 30 June 2012, it was clear from the clauses of the Agreement that the Appellant had shifted its responsibility of providing after sale service to MAN Germany, for which it reduced the sale price by 500 Euros. Thus, it was this amount that was paid to MAN Germany for carrying out after sale service on behalf of the Appellant and this would be BAS liable for payment of service tax.

13. This finding of the Principal Commissioner is not in conformity with the terms of the Agreement. The role of the Appellant assigned under the Agreement was limited to sale of trucks including spare parts. Article 9.2 clearly provides that the Appellant shall not be responsible for rendering any after sale services and that MAN Germany shall arrange for such services as may be required by its marketing organizations or its designated buyers. Article 9.5 basically provides that as MAN Germany has to provide warranty and after sale service, the Appellant shall allow a discount of Euros 500 on the product sold by the Appellant to MAN Germany. This does not in any manner mean that MAN Germany was rendering after sale service **on behalf of the Appellant**. In fact, the agreement is to the contrary. It provides that the Appellant shall not be responsible for rendering any after sale service. In such a situation, it cannot be said, under any

circumstances, that MAN Germany was providing after sale service on behalf of the Appellant. After sale service was agreed to be provided by MAN Germany on its own account. The discount that is being offered by the Appellant to MAN Germany is merely an adjustment in the price of goods sold and is not towards provision of any service to be undertaken by MAN Germany on behalf of the Appellant. The service provided by MAN Germany would, therefore, not classify as BAS.

14. This would also be clear from the statement of Shri Abhay Athavale, Senior General Manager (Finance) of the Appellant. The relevant portion is as:

**"Q.5. On perusal of the Export Agreement dated 01st December 2006 entered into with the MAN it is spelt out in para 9.5 that an amount of € 500/ \$ 500 shall be paid by you in consideration of MAN's obligation for Warranty and after sale service for each vehicle sold.**

**Please elaborate.**

Ans. The clause No. 9.5 of the said agreement states that the company will allow the discount of an amount of € 500/ \$ 500 per vehicle to MAN towards not providing warranty and after sales service to MAN by us. This discount is offered to MAN because we are not providing warranty and after sales service.

**Q.7. Is your company under obligation to provide warranty and after sales service to your overseas customer?**

Ans. As a commercial trade practice, the warranty and after sales service is provided as per the contract with the customers. In case of export to MAN, the contract provides that such services will not be provided by the company.

**Q.9. Would that not mean that it is obligatory on the part of MAN to provide warranty and after sales service on your behalf?**

As per the agreement, the company sells vehicles to MAN and subsequently MAN may choose to provide or not to provide the warranty services to the customer of such vehicles."

15. The aforesaid statement of the Senior General Manager (Finance) would show that he had clearly stated that the discount that was offered to MAN Germany was because the Appellant was not providing warranty and after sale service. He also clearly stated that such after sale service will not be provided by the company and that it was open to MAN Germany to either provide or not provide after sale service to the customers.

16. The confirmation of demand, therefore, for the period 1 April, 2009 to 30 June, 2012 cannot be sustained.

17. In this view of the matter, it is not necessary to deal with the submissions advanced by learned Counsel for the Appellant regarding the invocation of the extended period of limitation or violation of the principles of natural justice.

18. The impugned order dated 22 February 2016 passed by the Principal Commissioner is, accordingly, set aside and the appeal is allowed.

(Pronounced in the open Court)

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(C.L. MAHAR)**  
**MEMBER (TECHNICAL)**

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