Service Tax liability on Handling Charges collected by Car dealers

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At the time of sale, Car dealers would collect various charges from the customers, over & above the Ex-show room vehicle price, one among those charges is handling charges apart from registration charges, road tax, insurance, extended warranty charges for providing the extended warranty, Road Side assistance charges for providing vehicle breakdown assistance, Permanent registration charges for assisting in registration of the vehicle etc., further while selling of spare parts/components also dealers would collect ‘handling charges’ In this article I made an attempt to deal with taxability of handling charges under the provisions of Finance Act, 1994.

What is it for: Before we discuss on taxability of handling charges, it is important to understand what exactly handling charges would constitute? These are charges that a dealer claims from the customer to cover some of its expenses such as

- ✓ truck transport & deputation of manpower to bring vehicle from stock yard to show room,
- ✓ Initial petrol/diesel issued at the time of sale,
- ✓ Photo frame, pouch, flower bouquet, sweet-box etc.,

Such charges vary from dealer to dealer and would be in the range of Rs. 3,500/- to Rs. 25,000/-. The above is official version. However the unofficial version is that these handling charges are also meant to “smoothen” the registration process, read as some form of graft among middlemen.

Legality of collection of these charges: On April 20, 2012, the Supreme Court of India issued a directive to car dealers to strike down these handling charges, but dealers paid little heed to it and unsuspecting customers continue to be charged this handling charge. Followed by the Hon’ble Apex court direction, Transport Department of Delhi also issued a public notice advising the customers to not to pay for handling charges.

To escape above disputes, most of car dealers adopt different nomenclature such as ‘Logistic charges’ or ‘Post Sale Charges’ or ‘incidental charges’ or ‘Miscellaneous charges’.

Taxability of these charges: Though the name/nomenclature is different but the nature of such charges remains the same. The moot question that arises here is whether such charges attract service tax or whether the same attracts VAT. Dealers are already paying VAT on the said charges treating them as part of sale price however officers of service tax department in many parts of the country raising service tax demands saying mere payment of VAT does not exhaust from service tax liability. In this article, an attempt has been made to discuss the service tax implications on said charges.

For the period upto 30.06.2012:

Under selective based approach, the most appropriate category for determining the taxability is "Authorized service station" wherein only repair or reconditioning or restoration or decoration or other similar services are made taxable and in case of handling charges no such specified activities were undertaken same view was confirmed in the following case laws:

- ✓ *CCE* v. *Seva Automotives Private Limited* 2007 (7) STR 276 (Mum-Trib) wherein it was held that *"in view of the finding of the lower appellate authority that **handling charges are in relation to sale and not in relation to any services provided by the respondents** and further, prima facie, the revenue has not been able to show that the handling charges on which the Service tax has been demanded by the adjudicating authority is in the nature of repair charges liable to Service tax"*.
- ✓ And further in case of Automotive Manufacturers Private Ltd v. CCE 2015-TIOL-390-CESTAT-MUM wherein it was held that *"Therefore, we do not understand how service tax levy would apply especially when the goods are subject to sales tax/VAT on a value inclusive of handling charges."*

Therefore handling charges are not covered under this category.

And next appropriate category is "Business auxiliary service (BAS)" wherein first clause of BAS definition would be relevant in this case however close reading of the said clause makes it clear that it attempts to cover transactions involving sale of goods between two parties and the third party either facilitates or supplements such transaction in any fashion. In absence of third party, it can be safely concluded that handling charges does not fall under this category also.

For the period after 01.07.2012:

It is clear that above activities (for which handling charges are collected) would be undertaken while selling of cars to the customers and not otherwise. That is if there is no sale of car, no handling activity would be undertaken. Therefore undertaking of handling activity is coupled with sale of car and same can be called as bundled service as defined under section 66F of Finance Act, 1994. In which case principles laid down under Section 66F is required to be applied to determine the taxability.

It can be said that receipt of handling charges is naturally bundled with sale of cars since majority of similar service providers in the industry would receive the said amounts. Accordingly, provision of above activities and sale of vehicles has to be treated as provision of single service which gives such bundle its essential character. And in any case, activity of selling of cars is essential and undertaking of above activities is incidental to the sale. Therefore above activities has to be bundled with sale of cars and it should be treated as sale of cars only. That being a case, service tax is not leviable on handling charges since sale of cars is covered under the

exclusion part of service definition given under section 65B(44) of Finance Act, 1994 i.e. transfer of title in goods.

Further it is worthwhile to mention here that either under selective based approach or negative list based approach (i.e. before and after 01.07.2012), the handling charges are incurred in connection with the sale of cars. If that be so they will obviously form part of the value of the goods when they are subsequently sold and consequently sales tax/VAT would apply and not service tax. And the same view was found support from the following:

- ✓ CBEC Circular No. 699/15/2003-CX., dated 5-3-2003 wherein it was clarified that *"it is envisaged appears that any activity of sales dealer at the pre-sale stage or at the time of sale will not come under the purview of service tax."*
- ✓ Automotive Manufacturers Private Ltd v. CCE 2015-TIOL-390-CESTAT-MUM wherein it was held that *"We notice that the appellant are charging handling charges whenever automobile parts are sold either independently or part of the service and repair of automobiles. In both the situations, invoices are issued for the sale of the goods as well as for collection of service charges for the services rendered. Handling charges were incurred in connection with the procurement of the goods and are included in the value of the goods sold and sales tax/VAT liability is discharged on the value inclusive of the handling charges. Therefore, we do not understand how service tax levy would apply especially when the goods are subject to sales tax/VAT on a value inclusive of handling charges. It is not in dispute that the handling charges are incurred in connection with the procurement of the parts. If that be so they will obviously form part of the value of the goods when they are subsequently sold."*
- ✓ Indian Oil Corporation Ltd v. CCE 2015 (38) STR 501 (Tri. - Mumbai) wherein it was held that *"whatever expenses have been incurred before transfer of the goods, form part of the sale price of goods"*

In view of the above legal position & fact that handling charges are collected as part of sale price, it can be safely concluded that service tax is not liable to paid on handling charges even after introduction of 'Negative list'.

Further possible & ideal solution would be to merge handling/logistics charges in the dealer margin. Such a step will not only avoid dispute and litigation on the type of tax applicable (i.e. whether VAT or service tax) but will also obviate public revulsion and litigation.