केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

वस्तु एवं सेवा कर भवन, सातवीं मंजिल,पॉलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015

GST Building ,7th Floor,, Near Polytechnic, Ambavadi, Ahmedabad-380015

सत्यमेव जयते

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क फाइल संख्या :File No : V2/27/GNR/2019-20/15283 TO 15288

ख अपील आदेश संख्या :Order-In-Appeal No.: AHM-EXCUS-003-APP-26-2020-21

दिनाँक Date : 26.07.2020 जारी करने की तारीख Date of Issue: 06/08/2020

आयुक्त (अपील) द्वारा पारित

Passed by **Shri Akhilesh Kumar** ,Commissioner (Appeals) Ahmedabad

ग आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **AHM-CEC-003-ADC-PMR-008-18-19** दिनाँक : **28/03/2019** से सृजित

Arising out of Order-in-Original: **AHM-CEC-003-ADC-PMR-008-18-19**, Date: **3/28/2019** Issued by: Additional Commissioner,CGST, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Raj Motors
National Highway No. 8, Boria, Himatnagar, Sabarkantha, Gujarat.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:–

Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35– ण्बी/35–इ के अंतर्गत:–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में **दूसरा मंजिल, बहूमाली भवन, असारवा, अहमदाबाद, गुजरात** 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall beer a court fee stamp of Rs.6.50 paisa as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

(i) धारा 11 डी के अंतर्गत निर्धारित रकम

(ii) सेनवैट जमा की ली गई गलत राशि

(iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,
Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER-IN-APPEAL

This appeal has been filed by M/s Raj Motors, National Highway No.8, Boria, Himatnagar, Sabarkantha (Gujarat) [hereinafter referred to as "appellant"] against Order-in-Original No.AHM-CEX-003-ADC-PMR-008-18-19 dated 28.03.2019 [hereinafter referred to as "impugned order"] passed by the Additional Commissioner of CGST, Gandhinagar Commissionerate [hereinafter referred to as "adjudicating authority].

2. Briefly stated, the facts of the case are that the appellant is an authorized dealer of M/s Tata Motors Ltd, Mumbai [for short-TML] for sale and service of Tata Commercial Vehicles. During the course of audit of the records of the appellant for the financial year 2012-13 to 2016-17 by the officers of Central Tax Audit, Ahmedabad, it was noticed that they had received amounts as incentives on vehicles purchased/sold by them from TML. It was further noticed that such "incentive amount" was received by them from manufacturer on exceeding the target of sale of the vehicles as a dealer. As it appeared that the amount so received by the appellant purely as a 'incentive/commission amount' which are extra consideration for promoting sale of vehicles and hence they appeared to fall under taxable services under the category of Business Auxiliary Service. Based on the FAR No.3291/2017-18 dated 02.10.2017, a show cause notice dated 17.11.2017 was issued to the appellant for non-payment of Service Tax amounting to Rs.1,99,97,937/- along with interest, on the taxable value amounting to Rs.14,91,59,2294/- received during the relevant periods. The said show cause notice also proposes for imposition of penalty under Section76,77 and 78 of the Finance Act, 1994 [for short-FA).

2.1 Vide the impugned order, the adjudicating authority has considered the amount received towards incentives as taxable value for the purpose of charging Service Tax and confirmed the demand amounting to Rs.1,99,97,9337/- along with interest. He also imposed penalty of Rs.10,000/- under Section 77 of the FA and Rs.1,57,45,729/- under Section 78 of the FA. No penalty was imposed under Section 76 of the FA.

3. Aggrieved with the impugned order, the appellant has filed the instant appeal. The appellant has submitted that:

- They purchase vehicles from TML through a valid duty paid documents and sell to their customs at their own account; that the transaction between them and TML is on principal to principal basis and between them and customer was on principal to principal basis and TML has no role in transaction between them and customer.
- They were not providing any service to TML but only selling the vehicles purchased from TML by issuing invoices in their name and the consideration received from their customer directly goes to their account. Thus, the transactions are purely a trade transaction and cannot be termed as service to TML.

- The amount received in nature of incentives/discount from TML is on trade parlance and not for providing any service.
- TML is cleared the vehicle to them after payment of central excise duty on its transaction value; that subsequent reduction in the said transaction value by way of incentives by TML does not alter the excise duty of a dealer, therefore, such reduction cannot be subject to service tax.
- They receive incentive from TML and not from customer. It is for achieving target sale, sale of vehicle during a particular period of the year, sale of particular model of vehicle and so on.
- They relied on various case laws in support of their arguments.

4. The appellant has further submitted a written submission on 11.10.2019, wherein, they, inter-alia, further submitted that they were not providing any service to TML but selling vehicles which were manufactured by TML; thus, any amount in nature of incentive received by them from TML is on trade parlance and not for providing any service. They also submitted copy of case laws relied and copies of sales invoices.

5. Personal Hearing in the matter was held on 22.07.2020. Shri Shakir V. Chauhan, Chartered Accountant, appeared on behalf of the appellant and reiterated the submissions made in the Appeal Memorandum and submissions made on 11.10.2019. He also submitted a list of judicial pronouncements, covering the issue in the appeal, which they relied upon. He further submitted a written submission on 23.07.2020, wherein, they submitted that they are purchasing vehicles from TML and selling it to customers on their own account; the incentives/discount is given by TML subsequently to the appellant based on performance of number of vehicles purchased during a scheme period or discount offer period; appellant tax payer is selling vehicle at his own whims and at a market driven price and TML has no role in this sale of vehicle; and their discount/incentive confined to the number of vehicle purchased by them during a scheme period or discount offer period.

6. I have carefully gone through the facts of the case and submissions made by the appellant in their submissions and oral averments made during the course of Personal Hearing. The point to be decided in the matter is whether the incentives/commission received by the appellant from TML on account of exceeding target of sales of vehicles purchased from TML is taxable under "Business Auxiliary Service" (BAS) as defined under erstwhile Section 65(19) of the FA and later as taxable service under 65B (44) of the FA.

7. It is observed that the adjudicating authority has confirmed the demand in question, pertaining to the period from 2012-13 to 2016-17, on the grounds that the amount received by the appellant in the form of incentives/commission is an additional

consideration/benefit for exceeding the targets of sales; that the transaction carried out by them is in nature of service to promote the sale of product manufactured by TML; hence, the activity which is carried out for another person for a consideration qualifies as "service" in terms of Section 65B(44) of the FA with effect from 01.07.2012 and taxable under "Business Auxiliary service" as defined under Section 65(19) of the FA, prior to 01.07.2012. On other hand, the appellant has submitted that they are authorized dealer of TML and acts as a pure trader for purchasing and selling of vehicles manufactured by TML; that they collect amounts by issuing invoices and other documents at their own and TML giving incentives to them as trade discount. Thus, the activity carried out by them do not get covered as "service", in terms of Section 65 B (44) of the FA and also not falls under the service category of "Business Auxiliary Service" as defined under Section 65 B(19) of the FA.

8. Sub Clause (44) of the Section 65 B of the FA defines the term "service" as under:

> *"service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—*

Under clause (19) of Section 65 B of the FA,"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*
> *(iv) procurement of goods or services, which are inputs for the client; or*
> *(v) production or processing of goods for, or on behalf of, the client;]*
> *(vi) provision of service on behalf of the client; or*
> *(vii) 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 activity that amounts to manufacture of excisable goods.*
>
> *[**Explanation**. — For the removal of doubts, it is hereby declared that for the purposes of this clause, —*
>
> *(a) "commission agent" means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person —*
>
> *(i) deals with goods or services or documents of title to such goods or services; or*
> *(ii) collects payment of sale price of such goods or services; or*
> *(iii) guarantees for collection or payment for such goods or services; or*

(iv) undertakes any activities relating to such sale or purchase of such goods or services;

9. As per the term "service" defined above, Service Tax is chargeable if any activity qualifies as "service". Further, to fall under the category of "Business Auxiliary Service", there should be a service as defined above. Therefore, the crux of the issue is whether the extra amount received by the appellant as incentives/commissions from M/s TML on achieving sales target is in connection with "service" provided by the appellant, as concluded by the adjudicating authority or not.

10. It is observed that the additional amount in question received by the appellant as incentives/commission is in terms of incentive circular issued by TML to their dealers. The adjudicating authority has considered such income as extra consideration towards achieving target of sale as a service provider and concluded that the amount is taxable. On other side, the appellant has treated such amount as trade discount given by the TML on achieving sale target and it is not taxable as no service has been provided by them at any stage.

11. I have perused the copy of the incentive circular referred by the adjudicating authority in the impugned order. It is observed that TML has offered Monthly Incentive Scheme, Bonanza Incentive Scheme in the said Circular as per certain terms and condition. As per the offered scheme, incentives is payable monthly on achievement of target and bonus is payable on achievement of cumulative target for the periods given. Further, the said incentive circular is issued with certain terms and conditions to be fulfilled by the dealers. It is fact on records which is not disputed by the adjudicating authority that the appellant were selling the vehicles purchased from TML by issuing invoices in their name and the consideration received from their customers directly goes to their account only. This shows that TML has no ownership of the vehicles sold to the appellant and thereby it is clear that the vehicles were dealt by the appellant end only. It is the argument of the appellant that the transaction between them and TML is on principal to principal basis which find merit as the sale concluded by the appellant is not on behalf of TML. The adjudicating authority though admitting the fact that the transaction of purchase of vehicles by dealer from TML and subsequent sale thereof is on principal to principal basis, the subsequent incentives paid by TML is not considered on principal to principal basis. When the relationship between the appellant and TML is considered on principal to principal basis, I do not agree with the contention of the adjudicating authority that the incentives/commission received by the appellant under various schemes of TML, as mentioned in the incentive circular, are for promotion and marketing of vehicles manufactured by TML. Looking into the facts and incentive circular of TML issued to the dealers, the consideration received by the appellant which

is described as incentive/commission by the adjudicating authority, better qualified as performance based trade discounts and it can in no way be referred as pertaining to any kind of sale promotion activity. When the amount received is not termed as "extra consideration" but only a "trade discount" towards sale of vehicles/achieving sales target, the activity of the appellant cannot be termed as "service"; In the circumstances, the question levying Service Tax does not arise on such amount after or prior to 01.07.2012 as per definition of "Business Auxiliary Service" [Section 65 (19) of the FA] or as per definition "Service" [Section 66 B (44) of the FA].

12. I find that the Hon'ble Tribunal, Mumbai has considered identical issue in the case of Commissioner of Service Tax, Mumbai-I V/s Sai Service Station Ltd [2014 (35) STR 625]. By dismissing the appeal filed by the department, the Hon'ble Tribunal has held that the incentive received by the assessee for sale target set out as per circular issued by the manufacturer of vehicles, cannot fall under Business Aixuliary Service but are in the form of trade discount. The relevant paras 14 and 18 of the said decision are reproduced below:

> ***14.*** *In respect of the incentive on account of sales/target incentive, incentive on sale of vehicles and incentive on sale of spare parts for promoting and marketing the products of MUL, the contention is that these incentives are in the form of trade discount. The assessee respondent is the authorized dealers of car manufactured by MUL and are getting certain incentives in respect of sale target set out by the manufacturer. These targets are as per the circular issued by MUL. Hence these cannot be treated as business auxiliary service.*
>
> .....
>
> ***18.*** *In respect of sales/target incentive, the Revenue wants to tax this activity under the category of business auxiliary service. We have gone through the circular issued by MUL which provides certain incentives in respect of cars sold by the assessee-respondent. These incentives are in the form of trade discount. In these circumstances, we find no infirmity in the adjudication order whereby the adjudicating authority dropped the demand. Hence, the appeal filed by the Revenue has no merit.*

The said decision was followed by the Hon'ble Tribunal in the case of Commissioner of S.T Mumbai V/s M/s Jaybharat Automobiles Ltd [2016 (41) S.T.R. 311 (Tri. – Mumbai]; M/s Sharyu Motors [2016 (43) S.T.R. 158 -Tri. – Mumbai]; M/s Toyota Lakozy Auto Pvt. Vs. C.S.T., C.Ex., Mumbai-II & V [2017 (52) STR 299 (Tri.-Mumbai)]; the Hon'ble Tribunal, New Delhi in the case of M/s Satnam Auto [2017 (52) STR]; Rohan Motors Ltd. Vs. C.C.Ex., Meerut [2018 (96) Taxmann.com 31 (New Delhi-CESTAT)] and the Principal Bench of Hon'ble Tribunal, New Delhi in case of My Car Pvt Ltd [2015 (40) S.T.R. 1018 (Tri.-Del.)].

13. In view of above discussion and the factual substance along with ruling of the Hon'ble Tribunal, I agree with the arguments of the appellant that payments received by them as incentives towards achieving sale target cannot be considered as taxable additional consideration on promotion of vehicles. Therefore, I do not find any merit in the impugned order passed by the adjudicating authority which is required to be set aside. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

14. The appeal stands disposed of in above terms.

26th July, 2020

(Akhilesh Kumar)
Commissisoner (Appeals)
Date: 26.07.2020.

Attested

(Anilkumar P.)
Superintendent,
CGST (Appeals), Ahmedabad.

By R.P.A.D/Speed Post.

To
M/s Raj Motors,
National Highway No.8, Boria,
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3. The Additional Commissioner, CGST, Gandhinagar Commissionerate
4. The Asst. Commissioner (System), CGST, Gandhinagar Commissionerate
5. The Assistant Commissioner, CGST, Himatnagar Division.
6. P.A File
7. Guard File.