आयुक्त (अपील) का कार्यालय
Office of the Commissioner (Appeals)
केंद्रीय जीएसटी अपील आयुक्तालय - अहमदाबाद
Central GST Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ 26305065-079 : टेलेफैक्स26305136 - 079 :

DIN-20210364SW000000CCAE
स्पीड पोस्ट

क फाइल संख्या : File No : V2(ST) 17/GNR/2020-21

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-003-APP-66/2020-21**
दिनाँक Date : 25.02.2021 जारी करने की तारीख Date of Issue : 09.03.2021

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Orders-in-Original No. PLN-AC-STX-07/2019-20 dated 05.03.2020 passed by the Assistant Commissioner, Central GST & Central Excise, Division – Palanpur, Gandhinagar Commissionerate.

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant

M/S. Gajanand Motors Pvt. Ltd.,
Nr. R.T.O. Office,
National Highway,
Palanpur, Bansakantha385001.

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।

Any person aggrieved by this Order-In-Appeal 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 अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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.

(क) 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।

(A) 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.

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

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी 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।

(c) 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 अपीलः–

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

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत के अंतर्गतः–

Under Section 35B/ 35E of Central Excise Act, 1944 or Under Section 86 of the Finance Act, 1994 an appeal lies to :-

(क) 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 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद –380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,Bahumali Bhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of 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 ओदश 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 हैं।

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 adjudicating authority shall bear a court fee stamp of Rs.6.50 paise 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 contained in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील'** दाखिल करने **के लिए पूर्व शर्त बना दिया गया है .**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

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।

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

M/s. Gajanand Motors Pvt. Ltd., Near R.T.O. Office, National Highway, Palanpur, Bansakantha – 385001(hereinafter referred to as "appellant") has filed the present appeal against the Order – in – Original No. PLN-AC-STX-07/2019-20 dated 05.03.2020 (hereinafter referred as "impugned order") passed by the Assistant Commissioner, Central GST and Central Excise, Division – Palanpur, Gandhinagar (hereinafter referred as "adjudicating authority").

2. The facts of the case, in brief, are that the appellant is an authorized dealer of M/s Tata Motors Ltd, Mumbai (TML) for sale Tata Motor Car and service of Tata Vehicles and holding Service Tax Registration No. AABCG3701GST001 under the category of Repair and Maintenance service. The officers of Central GST Audit conducted audit of records of the appellant at their premises for the period April 2013 to June 2017. On reconciliation of the Balance Sheet as well as Profit and Loss Account of the firm with the ST-3 returns, the officers observed that they had not paid/short paid service tax on certain income. Subsequently, a SCN dated 21.02.2019 was issued to the appellant under F. No. VI/(b)-208/Gajanand Motors Pvt. Ltd./IA/17-18/AP-61 demanding service tax amount of Rs. 8,85,518/- on consideration received by them for providing Business Auxillary Service during the period F.Y. 2013-14 to F.Y. 2016-17 and of Rs. 50,724/- which was short paid by them for providing labour service income under proviso to Section 73 (1) of the Finance Act, 1994 along with interest under section 75 of the Act. The SCN also proposed imposition of penalty under Section 78 of the Act ibid.

2.1. The SCN was adjudicated vide the impugned order dated 05.03.2020 wherein the adjudicating authority has confirmed the demand along with interest and penalty. The adjudicating authority also appropriated an amount of Rs. 4,00,000/- already paid by the appellant toward their duty liability.

2.2. Being aggrieved with the impugned order, the appellant has preferred appeal on following grounds:

(i) The adjudicating authority has failed to consider their contention that the incentive received from manufacture by a dealer for achieving sales target etc. is in the nature of trade discount and consequently cannot be taxed to service tax.

(ii) As per the definition of Business Auxiliary Service under Section 65 (19) of Finance Act, 1994, for a commission agent, three ingredients are essential; first there should be a principal, secondly an agent who works for or on behalf of the principal, and thirdly a client. But in the present case, assessee is a dealer of principal (i.e. Tata-Motors Ltd) and it is settled law that a dealership of the manufacturer is a relationship between principal to principal, and that any incentive received from principal to principal basis cannot be termed as commission as has been held by Supreme Court in the case of ***Moped India Ltd. vs. CCE*** reported at ***1996(1993) 23*** *ELT 8.*

(iii) As per letter of intent for dealership, they have been given dealership of Tata Motors Ltd.

for purchase and sale of goods of the company and did not provide any service to the customers on behalf of the principal. Here, the relationship between a dealer to that of the company is that the dealer purchases the goods and sells to another person i.e. customers. Therefore, the relationship of principal vis-a-vis client is missing in this case. Hence, merely booking an amount as "income" in the form of incentives or commission cannot be termed as an income earned on account of any service provided by the assessee.In the instant case, the relationship between assessee and M/s Tata Motors is on principal to principal basis. This fact is clarified by the dealership agreement entered into by them and also affirmed by the fact that the goods are sold by them after paying the appropriate sales tax.

(iv) The adjudicating authority has passed order without going into detailed analysis of legalprovision which is already settled by many tribunal judgements.The main question of law in the present case is *"whether incentives received by dealer from manufacturer can be taxed under service tax or not?"*.This issue is already discussed and decided in a number of Tribunal cases. For reference they referred from the judgement by Delhi Tribunal in case of **T M Motors Pvt Ltd vs Alwar on 22 June, 2018**

(v) The contention of the adjudicating authority that the assessee sells vehicles only of the manufacturer hence incentive cannot be termed as discount is wrong and is irrelevant for the present issue. When there is a principal to principal based agreement is entered there is no question of counting number of manufacturers.

(vi) Contention of the adjudicating authority that the discount must be passed on to the customer is based on the non-apprehension of the business processes. The passing on of the discount to customer is neither compulsory nor relevant for deciding the issue on hand.

(vii) They have already paid service tax amounting to Rs 4,00,000/-. However, the adjudicating authority has imposed penalty on total amount of Rs. 9,36,242/-. Penalty cannot be imposed on the service tax already paid.

3. Personal Hearing in the matter was held on 16.12.2020. Shri Brijesh Thakar, Chartered Accountant, appeared on behalf of the appellant. He reiterated submissions made in the Appeal Memorandum. He further stated that he would make additional submissions giving bifurcation of service tax on issues which was accepted by them and amount paid during audit. He also relied on the recent judgement of CESTAT, Delhi in case of M/s Rohan Motors Limited on similar issue.

3.1. The applicant vide email dated 17.12.2020 submitted additional submission stating that they had filed appeal only for tax on incentive payments amounting to Rs. 6,49,424/- as per detailed working given in the submission. They further submitted that out of balance amount of service tax amounting to Rs. 2,86,819/- on finance payout and labour service income, they have made payment of Rs. 4,00,000/- before issuance of SCN which also included interest on the said amount. They also submitted table giving details of interest calculation. He also submitted judgement of the Hon'ble Tribunal, New Delhi in case of M/s Rohan Motors.

4. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum and additional written submissions as well as oral averments made during the course of Personal Hearing. It is observed that the issue to be decided in the matter is whether the incentives/other income 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 Finance Act, 1994 and later as taxable service under 65B (44) of the Act ibid. The demand pertains to period FY 2013-14 to FY 2016-17. The appellant has not contested the confirmation of demand by the adjudicating authority in respect of another two issues viz. income from financial payouts received from various financial firms and short payment of service tax on labour service income. They have claimed to have paid the amount in respect of issues accepted by them along with interest.

5. It is observed that the adjudicating authority has confirmed the demand in question, pertaining to the period from 2013-14 to 2016-17, on the grounds that the appellant had used the facility at location exclusively for sale and service of passenger cars of TML. If they were purchasing vehicles from TML and selling it to customers they should have received the profit margin from the customers and not from TML, as in this case. The incentives amounts received by them appear purely to be a commission amount, under the guise of various incentives as the discount was not passed on to the customers. 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 Finance Act, 1994 with effect from 01.07.2012 and taxable under "Business Auxiliary Service" as defined under Section 65(19) of the Act, 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. They have entered in to transaction on principal to principal basis and TML gave 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 Finance Act, 1994 and also not falls under the service category of "Business Auxiliary Service" as defined under Section 65 B(19) of the Act.

6. It is observed that the demand pertains to negative list regime i.e. after 1.7.2012 and hence the matter has to be decided based on the legal provisions prevalent at material time.

6.1. Sub Clause (44) of the Section 65 B of the Finance Act, 1994 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—*

Further, under clause (19) of erstwhile Section 65 of the Act, "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;

7. It is observed from the definition of "service" defined above, Service Tax is chargeable if any activity carried out by one person for another for consideration. Therefore, the crux of the issue is whether the amount received by the appellant as incentives/other income 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.

8. 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 Offtake Performance Discount as part of Dealers Spare Parts Performance Discount Policy, Performance Payout as part of CUP52 Scheme, and also offered various incentive under Policy of Test Drive Vehicles as per terms and condition prescribed therein. 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 scheme 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 has contended that since they were using the facility exclusively for the sale of passenger vehicles for TML to the exclusion of another class of vehicle as well as vehicle of another manufacturers, they were acting as agent of TML. Further, they should have received profit margin from the customers. I am not in agreement with the argument of the learned adjudicating authority in as

much as there is no dispute that the appellant is a dealer of TML and sells their vehicle. The contention of receipt of consideration from customers is out of context. 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/income received by the appellant under various schemes of TML, as mentioned above, are for promotion and marketing of vehicles manufactured by TML. Looking into the facts and incentive schemes 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 of 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 Finance Act, 1994] or as per definition "Service" [Section 66 B (44) of the Finance Act, 1994].

9. I find that the Hon'ble Tribunal, Mumbai has considered identical issue in the case of Commissioner of Service Tax, Mumbai-1 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 AuxillaryService 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 CarPvt Ltd [2015 (40) S.T.R. 1018(Tri.-Del.)].

10. In view of above discussion and the factual matrix along with ruling of the Hon'ble Tribunals, 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 in this regard which is required to be set aside.

11. Regarding the penalty imposed, I find that since the demand in respect of service tax on incentive payments does not sustain, the penalty imposed to the extent of the said demand also would not sustain. Accordingly, penalty imposed would stand reduced to the said extent. The remaining part of penalty imposed is upheld as the appellant has not challenged the demand confirmed in the remaining two points and when the demand stand confirmed, penalty is liable to be paid accordingly in terms of provisions of Section 78 of the Finance Act, 1994.

12. In view of my above discussion, the impugned order passed by the adjudicating authority is set aside to the extent it pertains to confirmation of demand of service tax on incentive payments and the remaining part is upheld and the appeal of the appellant is allowed to the same extent.

13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed off in above terms.

25th February, 2021..

(**Akhilesh Kumar**)
Commissioner (Appeals)

Date: 25.02.2020.

Attested:

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

By R.P.A.D/Speed Post.
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4. The Asst. Commissioner (System), CGST, Gandhinagar Commissionerate
5. The Assistant Commissioner, CGST, Himatnagar Division.
6. P.A File
7. Guard File