आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलेफैक्स07926305136

DIN : **20220264SW000000FCDC**

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1388/2021 /6129 - 33

ख अपील आदेश संख्या Order-In-Appeal Nos.**AHM-EXCUS-003-APP-101/2021-22**
दिनाँक Date : **11-02-2022** जारी करने की तारीख Date of Issue 14.02.2022

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

ग Arising out of Order-in-Original No. **34/AC/MEH/CGST/20-21** दिनाँक: **04.02.2021** issued by Assistant Commissioner, CGST& Central Excise, Division Mehsana, Gandhinagar Commissionerate

घ अपीलकर्ता का नाम एवं पताName & Address of the **Appellant / ~~Respondent~~**

M/s Falcon Motors
176/2, Bypass Circle,
At & PO-Mewad, Mehsana,
Gujarat- 384002

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 पूर्वोक्त 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 Delh - 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 हानिकार खाने 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 मे 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 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 निर्युक्त 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 भीतरमूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.का मुख्य शीर्ष 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 होतो रूपये 200/–फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 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,BahumaliBhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

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 ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होत 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 filed to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय 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 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 contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(8) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर 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:

(vii) amount determined under Section 11 D;
(viii) amount of erroneous Cenvat Credit taken;
(ix) 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

The present appeal has been filed by M/s. Falcon Motors, 176/2, Bypass Circle, At & PO-Mewad, Mehsana, Gujarat – 384 002 (hereinafter referred to as the appellant) against Order in Original No. 34/AC/MEH/CGST/20-21 dated 04-02-2021 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division : Mehsana, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant are holding Service Tax Registration No. AADFF8191NSD001 and are engaged in providing repair, reconditioning, restoration or decoration or any other similar services, of any motor vehicle. During the audit of the records of the appellant for the period F.Y. 2016-17 and F.Y. 2017-18 (upto to June, 2017) by the officers of Central GST, Audit, Ahmedabad, it was noticed that there was a difference in the income shown by the appellant in their financial records and ST3 returns. It was noticed that the difference in income was on account of the income received by the appellant in the form of "Claim received" from the manufacturer Tata Motora Limited (TML). The audit officers noticed that the 'incentive amount' was received by the appellant from the manufacturer of the vehicles, upon exceeding the target/promotion/marketing of the sales of the vehicles as a Dealer of the manufacturer of the vehicles. It appeared that the appellant had earned the sales promotional incentives from the vehicle manufacturer on account of promotion and marketing of their products. It appeared that the incentive amount received by the appellant was commission amount under the guise of various incentives and the same was extra consideration received for the efforts made by the appellant as a service provider for promoting additional sale of vehicles. It, therefore, appeared that the incentives was liable to service tax in terms of Section 66B of the Finance Act, 1994 and comes within the ambit of service as per Section 65B(44) of the Finance Act, 1994. The appellant appeared to have rendered taxable

services under the category of Business Auxiliary Services valued at Rs.1,56,42,181/- but had not paid service tax amounting to Rs.23,46,327/-.

2.1 It was further observed in the course of the audit that the appellant was also engaged in the trading of duty paid goods. The activity of trading is covered under the Negative List of Services under Section 66D (e) of the Finance Act, 1994. It was noticed that the appellant had availed cenvat credit of various input services which were commonly utilized for providing output services as well as trading activity. As per Rule 2 (e) of the Cenvat Credit Rules, 2004 (hereinafter referred to as CCR, 2004), exempted services includes service on which service tax is leviable under Section 66B of the Finance Act, 1994. Therefore, the provisions of Rule 6 (3) of the CCR, 2004 were applicable and the appellant was required to opt for either pay an amount equal to seven percent of the value of the exempted services or pay an amount determined under Rule 6 (3A) of the CCR, 2004. The appellant had not filed any option in this regard and, therefore, they appeared to be liable to pay an amount equal to seven percent of the value of the exempted goods, amounting to Rs.1,55,620/-. The appellant vide their letter dated 09.09.2019 submitted that they have availed cenvat credit in respect of taxable services only.

3. The appellant was issued Show Cause Notice bearing No. VI/1(b)-284/FALCON MOTORS/IA/18-19/AP-63 dated 27.11.2019 proposing recovery of the service tax amounting to Rs.23,46,327/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. Penalty under Section 78 of the Finance Act, 1994 was also proposed to be imposed. It was also proposed to recover the proportionate cenvat credit amounting to Rs.1,55,620/- under the proviso to Section 73 (1) of the Finance Act, 1994 read with Rule 14 (1) (ii) of the CCR, 2004 along with interest. Imposition of Penalty was also proposed under Section 78 (1) of the Finance Act, 1994 read with Rule 15 (3) of the CCR, 2004.

4. The said SCN was adjudicated vide the impugned order wherein the demand for service tax was confirmed along with interest. Penalty was also imposed under Section 78 (1) of the Finance Act, 1994. The proportionate cenvat credit was also confirmed along with interest. Penalty was imposed under Section 78 (1) of the Finance Act, 1994 read with Rule 15 (3) of the CCR, 2004.

5. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the following grounds :

i. The adjudicating authority has erred in treating incentives, discount as service and holding that as taxable under the category of Business Auxiliary Service as defined under Section 65 (19) of the Finance Act, 1994.

ii. The adjudicating authority has erred in confirming the service tax amounting to Rs.23,46,327/- along with interest and penalty.

iii. The adjudicating authority has erred in invoking the extended period of limitation.

6. The appellant filed additional written submissions on 09/02/2022 wherein it was inter alia submitted that :

- They are the authorized dealer of Tata Motors Limited (TML) and are purchasing vehicles from TML and selling it to customers on their own account. TML sells them vehicles through an invoice issued in their name and duty of excise is also discharged by TML on the transaction price. The transaction between them and TML is on principal to principal basis and TML does not have any role in the transaction between them and their customers.
- They are not providing any service to TML and they are selling vehicle manufactured by TML independently on their own account by issuing invoices and by paying VAT/CST.
- The transaction between them and TML is purely in the nature of trade and it cannot be termed as providing of service by them to

TML. The incentive/discount is received from TML and not from customer or any third person in connection with the sale.

- While selling the vehicle to them, TML is paying appropriate excise duty on the transaction value. Any subsequent reduction in the said transaction value by way of incentive by TML to them does not alter the excise duty liability of a dealer. This subsequent reduction in whatever name called can't be subjected to service tax again under the pretext of service. As no service is provided by them to TML, the question of service tax does not arise.
- They are not acting on anyone's behalf as they are the authorized dealer of TML and purchasing vehicles directly in their name and selling it in their name. Thus it is direct purchase and direct sales of goods.
- They rely upon the judgment in the case of : 1) Commissioner of Service Tax, Mumbai-I Vs. Sai Service Station Ltd – 2014 (35) STR 625 ; 2) Commissioner of ST, Mumbai Vs. Jaybharat Automobiles Ltd – 2016 (41) STR 311 (Tri.-Mumbai); 3) Sharyu Motors – 2016 (43) STR 158 (Tri.-Mumbai); 4) Satnam Auto – 2017 (52) STR 303; 5) My Car Pvt Ltd – 2015 (40) STR 1018; 6) Toyota Lakozy Auto Pvt Ltd – 2017 (52) STR 299 (Tri.-Mumbai); 7) Rohan Motors Pvt Ltd Vs. Commissioner of Central Excise– (2018) 96 Taxmann.com 31 (New Delhi – CESTAT); 8) T M Motors Pvt Ltd. Vs. Commissioner of GST, Customs & Central Excise, Alwar – (2018) 96 Taxmann.com 159 (New Delhi-CESTAT).
- They also rely upon OIA No. AHM-EXCUS-003-APP-26-2020-21 dated 26.07.2020 passed by the Commissioner (Appeals), Ahmedabad in the case of Raj Motors.
- Invocation of extended period of five years under Section 73 (1) of the Finance Act, 1994 is not legal and tenable.

7. Personal Hearing in the case was held on 09.02.2022 through virtual mode. Shri Shakir V. Chauhan, Chartered Accountant and Shri Saeed Mansuri, Advocate, appeared on behalf of the appellant for the hearing.

They reiterated the submissions made in appeal memorandum as well as those made in written submission made as part of the personal hearing.

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, submissions made at the time of personal hearing and additional written submissions as well as material available on records. I find that the issue involved in the present appeal is whether the income received by the appellant viz. incentive/discount income, are towards activity falling under Business Auxiliary Service and chargeable to service tax or otherwise. I find that the other issue involved in the SCN and which has been confirmed vide the impugned order regarding reversal of Cenvat Credit on common input services used in the taxable services as well as trading activity has not been contested by the appellant either before the adjudicating authority or in the present appeal. Hence, this issue is not being taken up for deliberation/decision.

9. I find that the appellant are an authorized dealer of the manufacturer of automobiles viz. Tata Motors Ltd (TML). It is the contention of the department that the income received in the form of incentive/discount from the manufacturer i.e. TML upon achieving the sales targets are sales promotion incentives from the manufacturer on account of promotion and marketing of their product and therefore, falling within the ambit of services as per Section 65B (44) of the Finance Act, 1994. In this regard, I find that I have earlier decided a similar issue in the case of M/s. Raj Motors vide OIA No. AHM-EXCUS-003-APP-26-2020-21 dated 26.07.2020, the relevant part of which is reproduced as below :

> "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."

9.1 I find that in the instant case too, the incentive received by the appellant is in the form of discount towards the vehicles purchased by them from the manufacturer. There is no dispute regarding the fact that the appellant are the authorized dealer of the manufacturer and not a commission agent. It is also not disputed that the vehicles are purchased by the appellant from the manufacturer on payment of excise duty. In view thereof, the incentives received by the appellant as discount from the manufacturer cannot be attributed to be towards any service provided by the appellant to the manufacturer. There being no element of service, the question of considering the incentive as consideration chargeable to service tax does not arise.

9.2 I find that the appellant had in their submissions before the adjudicating authority relied upon the OIA in the case of Raj Motors. However, the impugned order is silent on this issue and there is not even a whisper regarding the OIA in the impugned order. The adjudicating authority, while deciding the issue, has not followed the principles of judicial discipline in as much as he has not followed the higher appellate authority's decision, vide Order-in-Appeal No. AHM-EXCUS-003-APP-26-2020-21 dated 26.07.2020 in the case of Raj Motors on an identical issue. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. This view has been consistently emphasized by the various judicial forums including the apex court in a catena of decisions. The CBEC has also issued an Instruction from F.No.201/01/2014-CX.6 dated

26.06.2014 in this regard directing all adjudicating authorities to follow judicial discipline scrupulously. The impugned order passed by the adjudicating authority by not following the principles of judicial principles is bad in law and is liable to set aside on this count also.

9.3 I find that it has been consistently held by the Hon'ble Tribunals in various judgments that incentive/discount income are not chargeable to service tax under the category of Business Auxiliary Services. Therefore, the issue is no more *res integra*. Further, OIA No.AHM-EXCUS-003-APP-26-2020-21 dated 26.07.2020 passed by this authority in the case cited supra, has neither been stayed or overruled by any higher appellate authority. Therefore, by following my earlier decision as well as the decisions of the Hon'ble Tribunal in the cases cited hereinabove, I hold that the incentive amount received by the appellant is not towards the activity of Business Auxiliary Service and accordingly, is not chargeable to service tax. When the demand fails to survive, there does not arise any question of interest or penalty in the matter.

10. Accordingly, the impugned order in so far as it pertains to demand for service tax on incentive amount received by the appellant is set aside for not being legal and proper and the appeal filed by the appellant is allowed to this extent.

11. 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.

11th February, 2022.

(Akhilesh Kumar)
Commissioner (Appeals)
Date: .02.2022.

Attested:

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST

F No.GAPPL/COM/STP/1388/2021

To

M/s. Falcon Motors,
176/2, Bypass Circle,
At & PO-Mewad,
Mehsana, Gujarat – 384 002

Appellant

The Assistant Commissioner,
CGST & Central Excise,
Division- Mehsana,
Commissionerate : Gandhinagar

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (HQ System), CGST, Gandhinagar.
   (for uploading the OIA)
4. Guard File.
5. P.A. File.