आयुक्त का कार्यालय) ,अपीलस(
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate-Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan,Revenue Marg,Ambawadi,Ahmedabad-380015
☎ 26305065-079 : **टेलेफैक्स** 26305136 - 079 :
Email- commrappl1-cexamd@nic.in

DIN-20211164SW000000B6B7

स्पीड पोस्ट

क फाइल संख्या File No : GAPPL/COM/STP/97/2021-Appeal-O/o Commr-CGST-Appl-Ahmedabad/4343 To 4351

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-34/2021-22**
दिनाँक Date : **12.11.2021** जारी करने की तारीख Date of Issue : **22.11.2021**

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

ग Arising out of Order-in-Original Nos. **14/DC/Demand/2020-21/S. Tax & C. Excise dated 11.09.2020**, passed by the Deputy Commissioner, Central GST & Central Excise, Div-I, Ahmedabad-North.

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

Appellant- M/s. Cartec Motors Pvt. Ltd., Final Plot No. 670, Hitendranagar, Opp: Diamond Park, Nr. Naroda, Ahmedabad-382330.

Respondent- Deputy Commissioner, Central GST & Central Excise, Div-I, Ahmedabad-North.

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 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।

(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 के अंतर्गत:–

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,Bahumali Bhawan,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 pùblic 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 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.

(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 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

This appeal has been filed by M/s. Cartec Motors Pvt Ltd., Final Plot No. 670, Hitendranagar, Opposite Diamond Park, Near Naroda, Ahmedabad-382330 (in short '*appellant*') against the OIO No: 14/DC/Demand/20-21/S.Tax & C.Ex. dated 11.09.2020 (in short '*impugned order*') passed by the Additional Commissioner, Central GST, Ahmedabad North (in short '*the adjudicating authority*').

2. The facts of the case, in brief, are that the appellant is engaged in the trading of four wheelers and other related services and is the Authorized Dealer of Honda Motors India Ltd. They are also having their authorized service station in the same premises. They are registered under Works Contract Service, Business Auxiliary Service, Manpower Recruitment Service and Goods Transport Agency Service under RCM and are also availing the CENVAT credit facility. During the course of audit of the records of the appellant conducted for the period from February 2015 to 2017-18 (upto June), on verification of the records of appellant by the officers of Central GST Audit, Ahmedabad, it was noticed that;

a) the appellant, while providing Repair and Maintenance services of Honda brand cars, replaced / consumed spares, parts and consumables at the time of servicing and /or repairs of the vehicles, for which they raised bills /invoices. For the service portion, they charged and paid service tax whereas for sale of spares/parts/consumables, they paid VAT.

b) It was also noticed that they were availing Cenvat credit of service tax paid on rent of the premises and utilized the same for discharging their tax liabilities arising at their end. Thus, it appeared that the appellant was availing the benefit of Cenvat credit of service tax paid on common input services utilized for the providing taxable service (Repair, re-conditioning, restoration or decoration of motor vehicles, Business Auxiliary service, Works Contract service) and exempted services like trading activities (sale & purchase of spare parts & consumables). It was noticed that they did not maintain separate accounts for such exempted and non-exempted services and also failed to pay **Rs.5,62,347/-** as proportionate amount specified under the provisions of Rule 6(3) of the CENVAT Credit Rules (CCR),2004.

b) It was further noticed that the appellant during the disputed period received additional consideration of under various income heads viz: ***Handling charges*** charged at the time of sale of cars, ***Corporate claim*** received as reimbursement of discount given to certain privileged customers, ***Transit Delay Income*** as amount received from Honda Motors against damaged car. It appeared that the additional consideration received was a consideration for sales promotion of vehicles manufactured by Honda Motors India Ltd, which falls within the definition of '*service*' defined under Section 65B(44) of the Act. Therefore, taxable hence they were required to discharge tax liability of **Rs.18,95,923/-.**

3. Based on above audit observations, a Show Cause Notice (SCN for brevity) No: VI/1(b)-41/Cartec/AP-32/2017-18 dated 11.06.2019, was issued to the appellant

invoking extended period of limitation and proposing recovery of CENVAT credit amount of Rs.5,62,347/- under provisions of Section 73(1) of the F.A,1994 read with provisions of Rule 14(1)(ii) of the CCR, 2004 and recovery of service tax amount of Rs.18,95,923/- under provisions of Section 73(1) of the F.A,1994. Interest under Section 75 read with provisions of Rule 14(1)(ii) of the CCR,2004 and penalty under Section 78(1) was also proposed on the above demands.

4 The said SCN was adjudicated by the adjudicating authority vide the impugned order, wherein he disallowed the Cenvat credit availed & utilized and confirmed & ordered to recover an amount of Rs.5,62,347/-, in this respect. He also confirmed the demand and ordered to recover the service tax amount of Rs.18,95,923/-. Recovery of interest on above confirmed demand and imposition of equivalent penalty on the appellant was also ordered under Section 75 & 78(1), respectively.

5. Aggrieved with the impugned order, the appellant preferred the present appeal, primarily on following grounds:-

- That they are providing Works Contract service as the value of parts and materials used in repairing and servicing of the vehicles and value of labour charges are shown separately in the invoices, which is not exempted service. The parts & material used cannot be equated as trading as they were used in providing Works Contract service, hence, eligible to deduction in terms of Rule 2A(i) read with explanation (c) of the said Rules.
- The value of parts and materials used in provision of service was claimed as deduction from the value of service and therefore Cenvat credit of only input services exclusively used in the activity of workshop was availed thereby there is separate accounting of parts and materials used which is in consonance with the newly substituted Rule 6(2) of Cenvat Credit Rules, 2004 vide notification No.3/2011-CE (NT) dated 1.04.2011.
- As Cenvat credit of inputs used in taxable services was not availed and only the credit of input services used for output service is claimed, hence Rule 6(3) cannot be applied and that they are not required to reverse the Cenvat credit in terms of Rule 6(3). They placed reliance in the judgment of Hon'ble High Court of Gujarat passed in the case of Pr. Commr Vs M/s. Alembic Ltd **[2019(29) GSTL 625 (Guj.)]**
- The contractual agreement with the manufacturer is on 'Principal to Principal' basis. The handling charges recovered are towards expenses incurred on the motor vehicles from the date of its receipt from manufacturer to the date on which the vehicles are ultimately sold to the customer. The expenses are incurred before the sale of goods and being cost towards sale, it forms a part of sales value which attracts VAT and not the service tax. The said expenses include cost of fuel (from stock yard to till deliver of customer), giving away pop items (user manual, bag, decoration material, complementary, gifts etc), interest cost of inventory holding, cost of fuel consumed and fuel given to customer during delivery of car etc which are accounted for while arriving at the sale value of the vehicles, on which VAT is paid.

- They placed reliance on following case laws:-
  - M/s. Rohan Motors Ltd [2020 TIOL-1676-CESTAT-Del]
  - Automotive Manufacturers Pvt. Ltd [2015 (38) STR 1191 (Tr-Mumbai)]
  - IOCL [2015(38) STR 501 (Tri-Mum)]
  - Central Arecanut & Cocoa Marketing & Processing Co-operative Ltd [2014(46) taxmann.com 243 (Kar)]
  - Magic Creative Pvt. Ltd. [2008(9) STR 337 (SC)]
- The corporate claim is the reimbursement of discount given to certain privileged customer (medical/defence personnel) wherein half of the discount is reimbursed by Honda Motors. Since their relation with the manufacturer is on 'Principal to Principal' basis and they are not commission agent but stockiest. Honda Motors sell cars to them and they subsequently sell them to the customer on which VAT is paid, hence they are not liable to pay service tax on such income.
- The consideration received under transit delay income is the income to cover the expenses of damages incurred on the cars during transit to the showroom of the appellant. This income is against the sale of goods and not on account of rendering any service.
- There was no suppression as the service portion under works contract service after deducting the income of spare, parts, other consumables was shown in ST-3 returns filed. The additional considerations were also shown in book of accounts hence extended period cannot be invoked. Therefore, SCN is time barred as there was delay of 18/30 months as provided under Section 73(1) of the F.A, 1994. They relied on following case laws:-
  - Concept Motors Pvt Ltd F.O No /11717/2018 dated 07.08.2018.
  - Guala Closure (India) Pvt. Ltd. F.O. No:A/12117/2018 dated 23.08.2018
  - Span Commecial F.O.No:A/10185/2020 dated 14.01.2020
  - Sunder System Pvt. Ltd. {Manu/DE/4374/2019}
- As there is no suppression of facts with intent to evade payment of service tax, penalty under Section 78 is not invokable.
- Section 173 of CGST Act provides that Chapter V of the F.A, 1994, shall be omitted. As Section 174(2) of CGST Act, 2017 refers to repeal of the various Act and amendment of Finance Act, 1994. The saving provisions as applicable to repeal are not the same as applicable to amendments of an Act. When the Finance Act is amended and a particular Chapter is omitted, the Chapter is completely obliterated from the statute and it is impermissible to apply repeal and saving provisions for the same. Hence cannot be extended to levy of service tax u/s 73 which forms part of Chapter-V. Reliance placed on S.C. decision passed in the case of M/s. Rayala Corporation (P) Ltd [1969 SC 2 (412)], Kolhapur Cane Sugar Works {2000 (2) SC 536}

6. Personal hearing in the matter was held on 13.10.2021 through virtual mode. Shri Bishan R. Shah, Chartered Accountant appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum.

7. I have carefully gone through the facts and circumstances of the case, the impugned order passed by the adjudicating authority, submissions made in the

appeal memorandum as well as at the time of personal hearing and evidences available on records. It is observed that the issues to be decided under the present appeal are as under;

a) Whether the appellant is required to proportionately reverse the Cenvat credit availed in respect of service tax paid on rent of the premises, which was commonly used in providing exempted as well as taxable services, in terms of Rule 6(3) of the CCR, 2004?

b) Whether the additional consideration i.e. Handling charges, Transit Delay Income, Corporate Claim, received under various income heads should be treated as taxable services as defined under Section 65B (44) of the Finance Act (F.A.), 1994?

8. The demand pertains to the period F.Y. 2015-16 to F.Y. 2017-18 (upto June, 2017). The entire demand of Rs.5,62,347/- has been raised on the ground that the appellant, for discharging their tax liability, had availed & utilized Cenvat credit of service tax paid on rent of their premises which was used for rendering taxable and exempted services, without maintaining separate accounts. Therefore, in terms of the provisions of Rule 6(3) of the CENVAT Credit Rules (CCR), 2004, they were required to reverse proportionate amount of Cenvat credit utilized in exempted services i.e. trading activity. The appellant on the other hand are contending that they were not indulging in trading activities but were providing Works Contract Service and were showing the value of parts and materials used in repairing and servicing of the vehicles and value of labour charges separately in the invoices and have availed Cenvat credit of only input services exclusively used in the activity of workshop, hence, they were covered under Rule 6(2) of Cenvat Credit Rules, 2004 vide Notification No.3/2011-CE (NT) dated 1.04.2011.

8.1 To examine the claim of the appellant, Clause (54) of Section 65B of the F.A., 1994, defining Works Contract, is reproduced below:

> ***"works contract"*** *means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;*

In terms of above definition, transfer of property of goods involved for carrying out repair, maintenance, renovation or alteration of any movable property shall be covered under works contract. CBEC Education Guide on taxation of service at para 6.8.2, clarified that a contracts for repair or maintenance of motor vehicles shall be treated as 'works contracts', if property in goods is transferred in the course of execution of such a contract. The service tax has to be paid in the service portion of such a contract. The manner for determining the value of service portion of a works contract from the total works contract has been given in Rule 2A of the Service Tax (Determination of Value) Rules, 2006. As per sub-rule (i) of the said Rule 2A, the value of the service portion in the execution of a works contract is the gross amount charged for the works contract less the value of transfer of property in goods

involved in the execution of the said works contract. Thus, the gross amount does not include the value of transfer of property in goods involved in the execution of the said works contract.

8.2 It is not disputed that the appellant has not paid VAT on sale of goods (spare parts and consumable) nor is in dispute that the appellant were not showing labour charges separately in their invoices. Thus, considering the above definition and the clarification given above, I find force in appellant's contention that the service rendered by them was covered under Works Contract Service. Further, in terms of Section 66E (h) of the F.A., 1994, only service portion in the execution of a works contract shall constitute declared service. It is observed from the case records that the payment of service tax on labour charges and VAT payment on sale of spare parts & consumables are not disputed. Hence, I do not find any merit in the contention of the adjudicating authority that the appellant were indulging in the trading of spare parts & consumables.

8.3 When the above argument of the department does not hold any ground, I find that provisions of Rule 6(3) of the CENVAT Credit Rules, 2004, cannot be made applicable to the present issue as the appellant is providing works contract service and not indulging in trading activity like sale and purchase of spare parts & consumables. Hence they are not required to reverse the proportionate amount of CENVAT credit utilized. Once the demand is not sustainable, question of demanding interest and imposing penalty does not rise. I, therefore, find that the demand of Rs.5,62,347/- is not legally sustainable.

9. As regards the issue of non-payment of service tax of Rs.18,95,923/- on the additional consideration received under various income heads, I find that the adjudicating authority held that Handling Charges charged from customer to cover expenses like initial petrol/diesel, photo frame, flower bouquet, gift articles etc issued at the time of sale of cars; Transit Delay income received from Honda Motors to cover expenses on damages incurred on cars during transit to the showroom/stockyard of the appellant and Corporate Claim discount offered to customers with specific background where half of such discount is reimbursed by Honda Motors are received for sales promotion activities. He held these charges are collected separately by the appellant and hence are not part of sale value but should be treated as additional consideration and would fall within the ambit of 'service' as defined under Section 65B(44) of the Finance Act, 1994.

9.1 The appellant, however, are contending that the contractual agreement with Honda Motors is on 'Principal to Principal' basis and not that of as commission agent. Honda Motors sell cars to them and they subsequently sell them to the customer on which VAT is paid. Handling charges recovered are towards the expenses incurred on the motor vehicles from the date of its receipt from manufacturer to the date on which they are ultimately sold to the customer, hence it forms part of sales value which attracts VAT and not taxable under service tax law. The corporate claim is the reimbursement of discount given to certain privileged customer wherein half of the discount is reimbursed by Honda Motors and the consideration received under transit delay income covers the expenses of damages incurred on the cars during transit to

the showroom of the appellant, all these income is against the sale of goods and not on account of rendering any service hence should not be treated as taxable services.

9.2 It is observed that the appellant are recovering handling charges (as cost of fuel, user manuals, complementary gifts etc) from customer which is in relation to sale of vehicles and charged at the time of sale. Hence, all such expenses incurred for facilitating the customers shall be treated as related to transaction of sale. A sale transaction can be considered complete, once the car is delivered to the customer, till such sale, any expenses incurred should form part of the sale value of vehicles hence shall not come under the purview of service tax. The CBEC vide Circular No: 96/7/2007-S.T., dated 23-8-2007 clarified that;

> ***"Service tax is not leviable on a transaction treated as sale of goods and subjected to levy of sales tax/VAT. Whether a given transaction between the service station and the customer is a sale or not, is to be determined taking into account the real nature and material facts of the transaction. Payment of VAT/sales tax on a transaction indicates that the said transaction is treated as sale of goods.*** *Any goods used in the course of providing service are to be treated as inputs used for providing the service and accordingly, cost of such inputs form integral part of the value of the taxable service. Where spare parts are used by a service station for servicing of vehicles, service tax should be levied on the entire bill, including the value of the spare parts, raised by the service provider, namely, service stations. However, the service provider is entitled to take input credit of excise duty paid on such parts or any goods used in providing the service wherein value of such goods has been included in the bill. The service provider is also entitled to take input credit of service tax paid on any taxable services used as input services for servicing of vehicles.*
> "

9.3 It is further observed that the Hon'ble High Court (P&H) in the case of *CCE* v. *Nahar Industrial Enterprises Ltd.* - **2010 (19) S.T.R. 166** had held that till the ownership remains with the appellant, whatever charges are paid by them do not form part of the service provided by the appellant as the said charges are paid for themselves only and the charges in fact paid by the appellant form part of the sale of the goods in question.

9.4 It is further observed that the Ho'ble Tribunal, Mumbai in the case of AUTOMOTIVE MANUFACTURERS P. LTD. Vs COMMR. OF C.E. & C., NAGPUR [**2015 (38) S.T.R. 1191** (Tri. - Mumbai)] held that 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, service tax levy would not apply especially when the goods are subject to sales tax/VAT on a value inclusive of handling charges. Section 67 of the Finance Act, 1994, mandate levy of service tax on a value or consideration received for rendering the services. Therefore, any consideration received for supply of goods is not covered within the scope of Section 67.

9.5 On identical issue decided by me earlier in the case of M/s. Concept Motors (I) Pvt Ltd. vide **OIA No:AHM-EXCUS-002-APP-55/2021-22 dated 09.03.2021** wherein relying on various decision of Hon'ble Tribunal, it was held that the appellant was not providing any service to customer in respect of activities for which handling charges are collected and that they had discharged VAT on it treating as part of the sale of vehicle. Hence, I am of the considered opinion that the appellant are not liable for service tax in respect of amount recovered by them as handling charges. The demand confirmed in this regard is not legally sustainable and is liable to be set-aside.

10. As regards the transit delay income received from Honda Motors to cover expenses on damages incurred on cars during transit to the showroom/stockyard of the appellant and corporate claim as discount offered to customers with specific background and half of such discount being reimbursed by Honda Motors, it appears that all these amounts are received in relation to sale of vehicles and not for providing any sales promotion activity as contended by the adjudicating authority. Transit Delay income is received from Honda Motors not as sales promotion but as reimbursement of expenses incurred by the appellant on damaged cars. Similarly, the corporate claim is the discount offered to the customer on behalf of the manufacturer. The adjudicating authority rightly held that the appellant has no discretion to offer discount of even a single rupee to the customer but this argument, I find goes against his own contention that the corporate claim of such discount should be treated as additional consideration. The concept of consideration comes from the very root of the definition of service contained in clause (44) of section 65B as per which service has been defined as an activity carried out by a person for another 'for consideration'. In the present appeal, the appellant is selling the cars manufactured by Honda Motors and whatever cost is incurred by the appellant till the sale of cars shall form part of sale value as there is no service element involved. Given the fact that the appellant claimed the expenses incurred on damaged vehicles from the manufacturer and had no discretion to decide the discount, such income/reimbursement cannot be construed as consideration against any service.

11. The adjudicating authority has placed reliance on judgment of Hon'ble High Court of Bombay passed in the case of Commr. of Sales Tax, Mumbai Vs Page Point Service (P) Ltd reported at ***2015 (37) S.T.R. 938 (Bom.)*** stating that therein hon'ble court took a view that Handling charges for the service cannot form part of sale price. Relevant extract of the above citation is reproduced below:

> *"15. Furthermore, it may be noticed that in Sales Tax Appeal No. 5 of 2011 a Division Bench of this Court had an occasion to consider whether the Maharashtra Sales Tax Tribunal was correct in selling aside the tax on the handling charges or service charges for registration of motor-cycles and interest thereon. It is held that the goods which form part of the subject matter of the contract between the Respondent and its buyer were in a specific and deliverable stale. The transfer of property in the goods in pursuance of the sale contract takes place against the payment of the price of goods.* ***The delivery of the goods is effected by the seller to the buyer and the obligation under law to obtain registration of the motor vehicle is cast upon buyer. The service of facilitating the registration of the vehicle which is rendered by the seller-assessee is to the buyer and in rendering that service, seller acts as an agent of the buyer. The***

handling charges for this service cannot form part of sale price. *Thus, taking overall view of the matter it is clear that the sale price does not include airtime charges and/or license fees."* Emphasis supplied

I find that in the above case law, the respondent was rendering the service to buyer by facilitating the registration of the vehicle which is actually an obligation cast upon the buyer. Thus, the seller acts as an agent of the buyer, hence handling charges for this service was held to be not forming part of sale price. Whereas in the case on hand, the appellant was not rendering any service either to the buyer or to the manufacturer i.e. Honda Motors but was engaged in only sale of goods i.e. cars.

12. Thus, applying the ratio of above decisions and in view of the aforesaid discussion, I find that the handling charges, transit delay income and corporate claim charged and received as income by the appellant were in relation to sale of cars hence shall form part of sale value and cannot be considered as an activity covered under the ambit of service. I, therefore, hold that the impugned order confirming the demand in the matter fails to sustain legally on merits and deserves to be set-aside. Accordingly, when the demand fails, there cannot be any question of interest and penalty.

13. In view of above discussion and the decisions of the various judicial forum, I set-aside the impugned Order-in-Original.

14. 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.

12th November 2021

(Akhilesh Kumar)
Commissioner (Appeals)

Date: 11.2021

Attested

(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. Cartec Motors Pvt Ltd., - **Appellant**
Final Plot No. 670, Hitendranagar,
Opp. Diamond Park, Near Naroda,
Ahmedabad-382330

The Deputy Commissioner - **Respondent**
CGST, Division-I
Ahmedabad North
Ahmedabad

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Deputy Commissioner, CGST, Division-I, Ahmedabad North
4. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North. (For uploading the OIA)
5. Guard File.