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 : 20230564SW000000DECE

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STD/07/2023 / 1092 - 96

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-13/2023-24**
दिनाँक Date : **03-05-2023** जारी करने की तारीख Date of Issue 04.05.2023

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

ग Arising out of OIO No. **WS07/O&A/OIO-121/AC-RAG/2022-23** दिनाँक: **16.09.2022** passed by Assistant Commissioner, CGST, Division VII, Ahmedabad South

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

1. **The Assistant Commissioner**
   CGST, Division VII, Ahmedabad South
   3rd Floor, APM Mall, Anandnagar Road,
   Satellite, Ahmedabad -15

Repondent

1. **M/s Torque Commercial Vehicle Pvt Ltd**
   GF-1, Shri Panchdhara Complex,
   Opposite Ranjit Petrol Pump,
   S.G. Highway, Bodakdev, Ahmedabad – 380054

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

2ण 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)-

a. *(Section)* खंड 11D के तहत निर्धारित राशि;
इण लिया गलत सेनवैट क्रेडिट की राशि;
बण 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:
(clxxii) amount determined under Section 11 D;
(clxxiii) amount of erroneous Cenvat Credit taken;
(clxxiv) 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 the Assistant Commissioner, CGST, Division-VII, Commissionerate: Ahmedabad South (hereinafter referred to as 'the appellant'), on the basis of Review Order No. 55/2022-23 dated 14.12.2022 passed by the Commissioner, Central GST, Commissionerate : Ahmedabad South, in terms of Section 84 (1) of the Finance Act, 1994, against Order in Original No. WS07/O&A/OIO-121/AC-RAG/2022-23 dated 16.09.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division-VII, Commissionerate: Ahmedabad South [hereinafter referred to as "*adjudicating authority*"] in the case of M/s. Torque Commercial Vehicle Pvt. Ltd., GF-1, Shri Panchdhara Complex, Opposite Ranjit Petrol Pump, S.G. Highway, Bodakdev, Ahmedabad – 380 054 [hereinafter referred to as 'the respondent'].

2. Briefly stated, the facts of the case are that an inquiry was initiated against the respondent to determine their liability to pay service tax on the amount received from manufacturers in the form of discount under various schemes. During the inquiry, documents and records obtained from the respondent were scrutinized and it was found that the respondent had not paid service tax on Retail Incentive and Wholesale Discount Claim received from M/s. Isuzu Motors India Pvt. Ltd. (hereinafter referred to as 'Isuzu'). It was observed that the respondent was being given the said amounts on exceeding the target sales of vehicles as a dealer. The above income earned by the respondent was shown in their financial records under the head 'Retail Incentive' and 'Wholesale Discount Claim'. It was observed that the respondent had, during the period F.Y. 2015-16 to F.Y. 2017-18 (up to June, 2017), received total amount of Rs. 2,96,63,086/-. It appeared that the said income was sales incentives for exceeding the targets and promotional activities performed by the respondent. However, the respondent had not reported the said income in the ST-3 returns filed by them and also not paid service tax amounting to Rs. 43,85,399/- during the said period.

2.1 It was further observed on reconciliation of the ST-3 returns filed by the respondent with their ST-3 returns that they had short paid service tax amounting to Rs. 62,073/- on the differential income amounting to Rs. 4,23,099/-. It was also noticed that the respondent had late filed their ST-3 returns for the period April- September, 2016, October, 2016 - March, 2017 and April-June, 2017 and, were accordingly liable to pay late fees amounting to Rs. 21,900/-.

3. Subsequently, the respondent were issued Show Cause Notice bearing No. GEXCOM/SCN/ST/2745/CGST-DIV-7-COMMRTE-AHMEDABAD (S) dated 24.12.2020 wherein it was proposed to :

A. Demand and recover service tax amounting to Rs. 43,85,399/- not paid on the Retail Incentive and Wholesale Discount Income under the category of Business Auxiliary Services under the proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.

B. Demand and recover the service tax amounting to Rs. 62,073/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.

C. Demand and recover the late fee amounting to Rs. 21,900/- under Section 70(1) of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.

D. Impose penalty under Sections 77(2) and 78 of the Finance Act, 1994.

4. The said SCN was adjudicated vide the impugned order wherein :

a) The demand of service tax amounting to Rs. 43,85,399/- was dropped.

b) The demand of service tax amounting to Rs. 62,072/- was confirmed along with interest.

c) Penalty amounting to Rs. 62,072/- was imposed under Section 78 of the Finance Act, 1994.

d) Penalty amounting to Rs. 21,900/- was imposed under Section 77(1)(a) of the Finance Act, 1994.

e) Penalty amounting to Rs. 10,000/- was imposed under Section 77(2) of the Finance Ac, 1994.

5. Being aggrieved with the impugned order dropping the demand of service tax amounting to Rs. 43,85,399/-, the appellant department has filed the instant appeal on the following grounds:

i) The adjudicating authority appears to have not examined the factual position of the issue involved in the case. The various incentives received by the respondent are in the form of income as reflected in their financial records and paid by Isuzu subsequently to the respondent for promotion or marketing or sale of their goods. Thus, the activity for a consideration is liable to service tax as the activity neither falls under the Negative List nor exempted by any Notification.

ii) Combined reading of the provisions of Section 65B(44), 65B(51) and 66B of the Finance Act, 1994 explains that any activity carried out for a consideration, if not specified in the Negative List, would be liable to service tax.

iii) The adjudicating authority failed to appreciate that the principal to principal transaction between Isuzu and the respondent had completed once the respondent bought the cars and made payment for the same and Isuzu should not have any further role in the business transaction of the respondent and no further consideration should have flown from Isuzu to the respondent.

iv) The judgments in the case of Southern Motors and Maya Appliances relied upon by the adjudicating authority are in the context of Karnataka VAT Act.

v) The judgments in the case of Sharyu Motors and T. M. Motors Pvt. Ltd are prior to the introduction of Negative List or the amounts involved are within the monetary limits for filing appeals.

vi) Reliance is placed upon the judgment in the case of Surendra Singh Rathore Vs. CCE, Jaipur-I – 2014 (34) STR 147 (Tri.-Del.)

6. Personal Hearing in the case was held on 19.04.2023. Shri Nilesh Suchak, Shri Nandesh Barai and Shri Mrunal Shah, Chartered Accountants, appeared on behalf of the respondent for the hearing. They submitted a written submission during the hearing.

7. In their written submissions filed on 19.04.2023, the respondent submitted that :

- The contention of the appellant department at Para 10 of the Grounds of Appeal is not correct.
- The contention of the appellant department at Para 11 is incorrect. The Retail Incentive and Wholesale Discount received by them is in the nature of discount against purchase of vehicles and the same is not a consideration for any service and there is nothing to show that they have provided any service to Isuzu. Further, they have not shown the said discounts as consideration sale of goods or service in their books of accounts.
- There is no agreement between them and Isuzu for providing any service and they have not received any consideration for any service to Isuzu.
- They have purchased vehicles or goods as a dealer on principal to principal basis and any discount given later on is nothing but reduction in purchase price and is accordingly treated in their books of accounts.
- A Certificate dated 19.04.2023 of the Chartered Accountant to the effect that what they have received is discount and not consideration for any service, is submitted.
- Isuzu has sold them vehicles by charging excise duty and sales tax. They have sold these vehicles paying due VAT on them. The transactions are clearly purchase and sale of goods and are outside the purview of levy of service tax. They have merely done trading of goods which is in the Negative List under Section 66D of the Finance Act, 1994.

- The contention at Para 13 of the Grounds of Appeal are contrary to facts and contrary to general principles of trade and commerce. It is settled accounting principle that discount received reduces the cost of purchase and such discount cannot be presumed to be a consideration for any service.
- Reliance is placed upon the judgment in the case of Toyota Lakozy Auto Pvt. Ltd. Vs. CST – 2017 (52) STR 299 (Tri.-Mum.); Sai Service Station Limited Vs. CST – 2014 (35) STR 625 (Tri.); Sharyu Motors Vs. CST – 2016 (43) STR 158 (Tri.-Mum.); My Car Pvt. Ltd. Vs. CCE – 2015 (40) STR 1018 (Tri.-Del.); Garrisson Polysacks Pvt. Ltd. Vs. CST – 2015 (39) STR 487 (Tri.-Ahmd.); P.Gautam & Co. Vs. CST – 2011 (24) STR 447 (Tri.-Ahmd.); T.M. Motors Pvt. Ltd. Vs. CGST C & CE Final Order dated 22.06.2018 in Service Tax Appeal No. ST/53009/2015; Rohan Motors Ltd. Vs. CCE – 2020-TIOL-1676-CESTAT-DEL.
- Regarding the contention at Para 16 of the Grounds of Appeal, it is submitted that the decisions of the Hon'ble Supreme Court lay down the principle of accounting and commerce.
- The judgment in the cae of Surendra Singh Rathore relied upon by the appellant department is not applicable to the facts of their case.

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the written submissions made at the time of personal hearing and material available on records. The issue involved in the present appeal is whether the income received by the respondent, viz. Retail Incentive and Wholesale Discount Claim, are towards activity falling under Business Auxiliary Service and chargeable to service tax or otherwise. The demand pertains to the period F.Y. 2015-16 to F.Y. 2017-18 (upto June, 2017).

9. I find that the respondent are an authorized dealer of the manufacturer of automobiles viz. Isuzu. It is the contention of the department that the income received in the form of various incentives from the manufacturer, i.e. Isuzu, 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 this authority has 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-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 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 incentives received by the respondent are in the form of discount towards the vehicles purchased by them from the manufacturer. There is no dispute regarding the fact that the respondent are the authorized dealer of the manufacturer and not a commission agent. It is also not disputed that the vehicles are purchased by the respondent from the manufacturers on payment of excise duty. In view thereof, the incentives received by the respondent as discount from the manufacturer cannot be attributed to be towards any service provided by the respondent to the manufacturers. There being no element of service, the question of considering the incentive as consideration chargeable to service tax does not arise.

10. The appellant department has relied upon the decision in the case of Surendra Singh Rathore Vs. CCE, Jaipur-I – 2014 (34) STR 147 (Tri.-Del.) and Nirmal Devi – 2015 (38) STR 1113 (Commr. Appl.). I find that the facts involved in these cases are entirely different from that in the present appeal. The decision in these cases were pronounced in the context of Commission earned under the Multilevel Marketing Scheme. Therefore, the said decisions have no bearing in the facts and circumstances of the present case.

10.1 I find that the judgment of the Hon'ble Tribunal in the case of Commissioner of Service Tax, Mumbai-1 V/s Sai Service Station Ltd [2014 (35) STR 625] is squarely applicable to the facts of the present case. Further, the said judgment was also followed in 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.)].

10.2 The judgment of the Hon'ble Tribunal, Mumbai in the case of Commissioner of Service Tax, Mumbai-1 V/s Sai Service Station Ltd [2014 (35) STR 625] was pronounced in the context of the erstwhile provisions of the Finance Act, 1994 prior to the introduction of the Negative List based Service Tax regime. However, in case of Rohan Motors Ltd. Vs. Commisioner of Central Excise, Dehradun – 2021 (45) GSTL 315 (Tri.-Del.), the Hon'ble Tribunal had taken a similar view even for the period post introduction of the Negative List of Services and held that :

> **"14.** In regard to the period post July, 2012, reliance has been placed by the Learned Counsel for the appellant on an order dated March 23, 2017 passed by the Joint Commissioner, Central Excise in the matter of *M/s. Rohan Motors Ltd.* (*supra*) The period involved was from October, 2013 to March, 2014 and 2014-15. The Joint Commissioner, after placing reliance upon the decision of the Tribunal in *Sai Service Station Ltd.* (*supra*), observed as follows :

> "I also find that the ratio of the aforesaid case of *CCE, Mumbai-I* v. *Sai Service Station* is squarely applicable to the facts of the present case and hold that no service tax can be demanded on the incentive which was in form of trade discounts, extended to the party in terms of a declared policy for achieving sales target. Accordingly, I find that the demand of service tax raised on this count is unsustainable. Thus demand of interest under section 75 of the Act is also no sustainable."
>
> **15.** The Department, in the present cannot be permitted to take a different view. The service tax on the amount received from incentives could not, therefore, have been levied to service tax."

10.3 In view of the aforesaid judgments of the Hon'ble Tribunals holding that incentives/discounts received towards sales of vehicles/achieving sales targets is not chargeable to service tax, the issue is no more *res integra* and stands settled in favour of the respondent. Therefore, the incentives/discounts received by the respondent from Isuzu cannot be considered as consideration towards sales promotion/marketing and neither is it consideration towards provision of any service by the respondent.

11. In view of the above, and following the judgments of the Hon'ble Tribunal, which are binding on me in terms of the principles of judicial discipline, I am of the considered view that there is no merit in the appeal filed by the department. Accordingly, I uphold the impugned order and reject the appeal filed by the appellant department.

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

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

3rd May, 2023.

(Akhilesh Kumar)
Commissioner (Appeals)
Date: 03.05.2023.

Attested:

(N.Suryanarayanan. Iyer)
Assistant Commissioner (In situ)
CGST Appeals, Ahmedabad..

BY RPAD / SPEED POST

F No.GAPPL/COM/STD/7/2023

To

The Assistant Commissioner,
CGST & Central Excise,
Division- VII,
Commissionerate : Ahmedabad South

Appellant

M/s. Torque Commercial Vehicle Pvt. Ltd.,
GF-1, Shri Panchdhara Complex,
Opposite Ranjit Petrol Pump,
S.G. Highway, Bodakdev,
Ahmedabad – 380 054

Respondent

Copy to:

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