



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आज़ादी का
अमृत महोत्सव

By SPEED POST

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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/1342/2023 / 1568-32
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-296/2023-24 and 29.02.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	06.03.2024
(ङ)	Arising out of Order-In-Original No. 32/CGST/Ahmd-South/JC/MT/2022-23 dated 15.01.2022 passed by The Joint Commissioner, Central GST, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Planet Automotive Pvt. Ltd., 30 M.H. Mills Compound, Planet House, Khokhara Circle, Maninagar (East), Ahmedabad - 380008

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 :-

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 :-

(क) 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 में हो माल की प्रक्रिया के दौरान हुई हो।

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

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

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

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

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

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट 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।

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.

(2) 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 दिनांक 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 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 अंतर्गत:-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद 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।

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 above para.

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. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.



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

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding 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 अनुसूची -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 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 is 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) एके प्रति अपीलो 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)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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.

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

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty of 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 Planet Automotive Pvt. Ltd., 30 M.H. Mills Compound, Planet House, Khokhara Circle, Maninagar (East), Ahmedabad-380008 (hereinafter referred to as the "*appellant*") against Order in Original No. 32/CGST/Ahmd.-South/JC/MT/22-23 dated 15.11.2022 [hereinafter referred to as "*impugned order*"] passed by the Joint Commissioner, CGST, Ahmedabad South (hereinafter referred to as "*adjudicating authority*").

2. The appellant are registered entity with the Service Tax Department having Service Tax Registration AADCP6507BST001 dated 11.01.2006, and they are involved in providing taxable Business Auxiliary Services and services as an Authorized Service Station. The appellant fall under the broad category of 'Service' as defined in Section 65B(44) of the Finance Act, 1994, as amended from 01.07.2012.

The appellant were noticed to have not filed all their service tax returns. Therefore, in order to check possible evasion/non-payment of service tax, an inquiry was initiated against the appellant and an inspection of the records of the appellant under Section 67 of the CGST Act, 2017 on 21.05.2018 revealed discrepancies. A statement of Shri Ashok Kalyanbhai Patel, Chief Accountant of the appellant was recorded, in which he stated on 21.05.2018 under Section 70 of CGST Act, 2017, that the appellant had not filed ST-3 returns for 2016-17 and 2017-18 (April-June 2017) due to financial constraints. The total service tax payable for April 2016 to March 2017 was Rs.2,05,06,071/-, of which Rs. 1,92,76,334/- was paid earlier, and the remaining Rs.12,29,736/- was paid on 21.05.2018. For April to June 2017, the appellant paid outstanding service tax of Rs. 13,43,771/- on 21.05.2018. Subsequently, the appellant committed to pay entire Govt. dues (interest, penalty, etc.) at the earliest.

After that, the appellant were requested to inform us to whether



they have paid entire Govt. dues, as assured by them during the statement dated 21.05.2018. After multiple summonses for submitting the required documents, the appellant submitted various documents, including Balance Sheets and Profit & Loss accounts. A certificate from a Chartered Accountant highlighted an error in the audited balance sheet for the F.Y. 2016-17. They said that the figures of Revenue from Accident and Service labour and Sale of consumables were interchanged and the actual sale of consumables was Rs. 2,35,56,167/- and Actual Labour was Rs. 8,63,53,953/-.

The appellant applied Sabka Viswas Legacy Dispute Resolution Scheme (SVLDRS), 2019 on 31.12.2019, initially declaring Rs. 25,73,507/- in tax dues. However, subsequent requests to accept the SVLDRS application after the expiry of the scheme on 15.01.2020 and revised declarations of amount Rs. 59,68,800/- out of which Rs. 25,73,507/- were paid (during the course of recording statement on 21.05.2018) were not accepted.

On going through the documents submitted by the appellant, a Show Cause Notice No. STC/04-05/Planet Automotive/O & A/2020-21 dated 12.06.2020 were issued, wherein the total service tax liability for the period from April 2016 to June 2017 was calculated at Rs. 3,75,87,664/-. Considering the payments made of Rs. 1,92,76,334/-, the remaining amount of Rs. 1,83,11,330/- was deemed recoverable under the provision to Section 73(1) of the Finance Act 1994, read with section 68 of the Finance Act, 1994 as amended along with interest under Section 75 of the Finance Act, 1994. The appellant were also imposed penalty under Section 77 and 78 of the Finance Act, 1994. The payment of Rs. 25,73,507/- on 21.05.2018 by the appellant was proposed to be appropriated.

3. The Show Cause Notice was adjudicated vide the impugned



order dated 15.11.2022, and corrigendum dated 14.12.2022 to the order dated 15.11.2022, wherein:

- (i) Out of proposed demand and recovery of Rs. 1,83,11,330/- by SCN dated 12.06.2020, the adjudicating authority confirmed demand and recovery of Service Tax amounting to Rs. 1,20,83,962/- and Rs. 34,27,827/- (accepted by the appellant) [Rs. 33,95,292/- [+] Rs. 32,532/-] under the provision of Section 73(1) of the Act along with demand and recovery of interest under Section 75 of the Act
- (ii) The demand and recovery of equivalent penalty of Rs. 1,80,85,296/- under the proviso of 78(1) of the Act.
- (iii) The demand and recovery of Rs. 20,000/- and Rs. 64,800/- under Section 70 and 77 of the Finance Act, 1994 respectively for the failure to correctly self assess the tax and for not filing ST-3 returns and for not honoring the Summons and for not submitting documents to the department.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:

- The Appellant was surprised with the observation that the Ld. Adjudicating Authority even after appreciating and without disputing the income is received from insurance companies which are liable to tax under RCM (i.e. in the hands of recipient of the services - "insurance companies") under Notification No. 30/2012-ST, dt. 20.06.2012 (as amended from time to time).
- The Appellant was also surprised with the vague interpretation and conclusion on the sole ground that all commissions are of demand against the Appellant classified under BAS "Business Auxillary Services" and fully



taxable thereby totally ignoring and misunderstanding the above said notification.

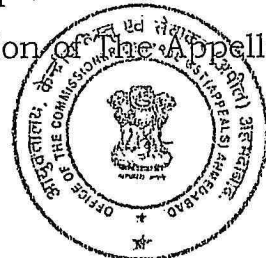
- The Ld. Authority failed to appreciate that, how the Appellant has provided with the detailed break up of commission from the insurance companies, hence what is looked upon is the group total and there are individual ledgers very well maintained to clearly demonstrate the income received from insurance companies which is subjected to tax under RCM.
- Hence the Appellant hereby provide with the complete details of commission received from insurance companies along with company wise including calculating service tax under SVLDRS on Cum-Duty basis.
- In the impugned show cause notice service tax was demanded on total commission earned of Rs. 11,59,47,805/-. In this regard it is the contention of the Appellant that they are rendering service as commission agent to various Finance Companies and also to Insurance company. The Appellant have paid service tax on the commission earned from the Finance Companies, however the commission earned from the Insurance company is liable to service tax in the hand of Insurance companies under Notification. However, the learned adjudicating authority has not considered the submission of the Appellant and confirmed the demand as discussed above which shall be subjected to be dropped in true spirit of justice. No. 30/2012-ST and not the Appellant.
- Figures of AMC and other income are interchanged and correct table is as under:

Cat.	Income heading	F.Y. 2016-17	F.Y. 2017- 18 (Up to June 2017)	Total Taxable Turnover



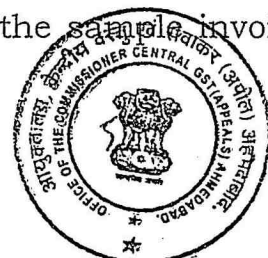
C	Service Contract (AMC)	7095674	1682685	8778359
D	Other Misc./Operating Income	955144/- (being non-taxable as per the OIO)	1047730	1047730

- Further as per impugned order the taxable value of Rs. 9,55,144/- was considered to be dropped.
- The Appellant would like to submit that the Ld. Authority has accepted and confirmed that the Appellant is eligible for 30% abatement in terms of Rule 2A of Determination of Value Rules, 2006.
- In respect to other misc. income it was the claim of the Appellant that this income is related to Kasar-Vatav and other discount received during the course of sale of cars and sales of spares and accordingly the said Income is not liable to be taxed.
- In respect to the Free service coupon income the findings of the learned adjudicating authority that "On the aforesaid contention, leaving aside the amount of free servicing which the assessee said to have included in the value of cars on which sales tax was charged and paid and, going on by such methodology adopted, I find that there is no dispute about the taxability of such reimbursed amount. Only the argument remains on the part of The Appellant is that they have the sales tax on the said amount which I find does not hold water. Both the levies are different and collected under the different provision of law in the instant matter it is because of methodology so adopted the assessee has paid sales tax which was chargeable to service tax. Therefore, they are under obligation to discharge payment of service tax as per the details shown separately hereunder in the later part of the order is arrived at without appreciating the contention of The Appellant.



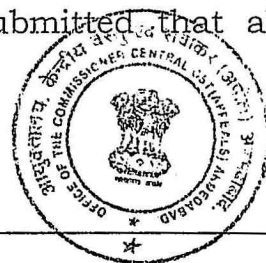
It contended that value of Free Service coupon is included in the value of cars sold. The Appellant is under obligation to impart free service because of the contract with the manufacturer of the Car. Therefore, The Appellant could not charge their service charge for executing free service under the said contract to the customers. Accordingly, The Appellant would be compensated by the manufacturer by way of reimbursement claim by The Appellant on the basis of free service coupon issued to the customers while selling the car. Therefore, value of free coupon was suffered VAT at the time of sale of car, Hence it would be the part of Trading activities and accordingly in terms of Section 66D of the Finance Act, 1994 no service tax is required to be collected from The Appellant.

- In respect to the Direct income/Claim income the decision in the case law of Southern motors vs State Govt. of Karnataka 2017(358)ELT 3(SC) was in relation to Karnataka Value Added Tax Rules, 2005 wherein the appeal of The Appellant was allowed for non-inclusion of Trade discount which were not reflected at the time of sale i.e. post-sale discount. The learned adjudicating authority failed to appreciate the said decision. On the contrary, the said decisions are also support of the Appellant's in the present case. Therefore the reliance of the learned adjudicating authority is mis-placed and mis interpreted without correct appreciation of the said decision.
- In respect to the Accessory Sale income the Appellant submit that this is pure material sale and on which respective VAT is already paid and as adjudicated there is no mix supply of service as well as material. Therefore, value of sales of accessories was suffered VAT at the time of sale of car. Hence it would be the part of trading activities and accordingly in terms of Section 66D of the Finance Act, 1994 no service tax is required to be collected from The Appellant. However, the Appellant would like to humbly re-submit the ~~sample~~ invoices



for want of time.

4. Personal Hearing in the case was held on 14.08.2023. Shri Pravin Dhandharia, Chartered Accountant, appeared on behalf of appellant for the hearing and reiterated the contents of the written submission in the appeal. It is submitted that the commission income taken by the adjudicating authority included commission received from finance companies which was already declared in ST-3 returns and on which tax was already paid. Further, the appellant had filed SVLDRS in respect of commission income of Rs. 2,60,80,808/- which was rejected and the matter is pending before Hon'ble High Court of Gujarat. He submitted that on remaining Commission amount of Rs. 4,01,66,100/- service tax was payable by insurance companies under RCM. Therefore, the net taxable amount works out to be negative as mentioned on page 8 of their Appeal-Memo. Regarding AMC contract and other miscellaneous income is submitted that the amounts were interchange erroneously and the correct amount for AMC wise Rs.87,78,359 which was eligible for abatement under works contract service as held by impugned order. The amount of Rs. 9,55,144/- under other miscellaneous income, what is pertaining to sale of demo cars which is not within purview of service tax. Amount Rs. 10,47,730 pertains to other income which is self-explanatory. Regarding free service coupons, it is submitted that the value of free service is already included in the sale value of the cars on which applicable sales tax and excise duty has already been paid by the on the value manufacturing Company. Therefore no service tax reliable on the value of free service coupons as held in the case of Maruti Udyog Ltd. He submitted that the amount of Rs 1,23,94,264/- shown as direct income is actually sales discount provided by the manufacturer on the quantum of sales. The same being related to the sales is not part of any service rendered by the appellant. The amount of Rs.4,15,518/- towards accessory sale, being the sale of goods on which VAT has been paid is not subject to service tax. He submitted that all the



supporting evidence in respect of the submissions is enclosed with the appeal. He also submitted that the appellant is eligible for cum-tax benefits which have been denied by the adjudicating authority sitting in a logical end income principal findings. Therefore, he requested to set aside the impugned order and allowed the appeal.

4.1. Subsequent to the transfer and posting of Commissioner, the appellant was once again given opportunity for Personal Hearing which was held on 11.12.2023. Shri Pravin Dhandharia, Chartered Accountant, appeared for personal hearing on behalf of the appellant and reiterated the contents of the oral and written submission made earlier and requested to allow their appeal. Further, he submitted a summary of all the points at the time of Personal Hearing.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, and submission made at the time of personal hearing. As per the impugned order the details of service tax was worked out as per the table below:

Cat.	Income heading	F.Y. 2016-17	F.Y. 2017-18 (Upto June 2017)	Total Taxable Turnover	Service Tax
A	Accident and Service Labour received/Labour Sale	86353953	22295351	108649304	16297396
B	Commission Income	81600000	34347805	115947805	17392171
C	Service Contract (AMC)	0	1682685	1682685	252403
D	Other Misc./Operating Income	7095674	1047730	8143404	1221511
E	Rent Income	0	822900	822900	123435
F	RSA Income/Incentive	0	121493	121493	18224
G	Free Service Coupon/Re-imbursment	0	900123	900123	135018



H	Direct Income/Claim Income	0	12394264	12394264	1859140
I	Accessory Sale (Service Tax)	0	415518	415518	62328
	Total	175049627	74027869	249077496	37361624

6. As per the available record it is observed that out of total turnover shown in the above table of Rs. 24,90,77,496/-, the appellant have already paid service tax amounting to Rs. 1,92,76,334/- before the inspection by the department held on 21.05.2018 followed by further payment of Rs. 25,73,507/- on 21.05.2018. Thus, the appellant was demanded for the recovery of service tax amounting to Rs. 1,55,11,783/- vide the impugned order dated 14.12.2022 and the corrigendum thereof. However, as per the submission of the appellant, I take up the matter and discuss issue wise mentioned as category from A to I in the above shown table:-

A. Accident and Service Labour received/Labour Sale -Value involved Rs. 10,86,49,304/-

Upon perusing the Order-in-Original (OIO), it becomes evident that the appellant has discharged service tax pertaining to Accident and Service Labour received/Labour Sale income. However, for a residual amount of Rs. 2,16,903/- arises from the reconciliation process, on which the appellant agreed to pay service tax.

B. Commission Income -Value involved Rs. 11,59,47,805/-

In respect of the Commission Income amounting to Rs. 11,59,47,805/- during the impugned period the appellant contends that they have already paid service tax on the value of Rs. 5,14,93,878/- which was earned by the Finance Company and the income of Rs. 4,01,66,100/-, which was received from the Insurance Company is subject to tax under RCM (Reverse Charge Mechanism) i.e. in the hand of service recipient of the service in



the light of Notification No. 30/2012-ST dated 20.06.2012-as amended. As per OIO the appellant had submitted copy of certificates/declaration from the insurance companies regarding that Insurance Companies would be paying service tax under RCM. During filing of the Appeal Memorandum the appellant have submitted group summary of ledgers in respect of commission income received from various insurance companies viz. Bajaj Ali GIC, Cholamandlam, ICICI Lombard, Oriental Insurance, Reliance GIC, Tata AIG etc. and sample copy of invoices issued to the aforesaid insurance companies, which shows that the appellant have received income of Rs. 4,01,66,100/- from insurance companies and considering that it appears that the appellant is exempted to pay tax on Rs. 4,01,66,100/- under Notification No. 30/2012-ST dated 20.06.2012 and the insurance company would be liable to pay service tax on that income under Reverse Charge Mechanism. As regards to the remaining income of Rs. 2,42,87,827/, the appellant had filed SVLDRS in respect of commission income of Rs. 2,60,80,808/- which was rejected and the matter is pending before Hon'ble High Court of Gujarat. In view of the above discussion I find that the appellant are not liable to pay service tax on commission income of Rs. 4,01,66,100/- and they are also not liable to pay service tax on Rs. 5,14,93,878/- on which they have already paid service tax under forward charge method. The appellant could not be demanded service tax on Rs. 2,42,87,827/- as the matter in respect of SVLDRS is pending before the Hon'ble High Court.

**C. Service Contract (AMC) – Value involved Rs. 26,37,829/- &
D.-Other Miscellaneous Income-Value involved Rs.
81,43,404/-**

In respect of the service mentioned under Category C and Category D, the appellant clarify that in F.Y. 2016-17 the figure of AMC and other income are interchanged and as such the correct value of income in the head of AMC and other Miscellaneous



Income is produced as under:

Cat.	Income heading	F.Y. 2016-17	F.Y. 2017- 18 (Up to June 2017)	Total Taxable Turnover
C	Service Contract (AMC)	7095674	1682685	8778359
D	Other Misc./Operating Income	955144/- (being non-taxable as per the OIO)	1047730	1047730

In relation to the demand on service contract (AMC), the adjudicating authority had agreed the eligibility of 30% abatement in terms of Rule 2A of Determination of Valuation Rules, 2006. However, the appellant did not found to have submitted the required documents to substantiate their claim that the income from service of AMC provided by the appellant is related to supply of goods and service.

During the filing of Appeal Memorandum the appellant have submitted sample invoices to support the abatement claim in accordance with the Rule. On the basis of documentary evidence viz. sample copy of invoices issued to various customers, submitted by the appellant and as per the acceptance of the adjudicating authority in respect of eligibility of 30% abatement in terms of Rule 2A of Determination of Valuation Rule, 2006 the appellant are liable for payment of service tax only to the extent of 70% of the revised value of Rs. 87,78,359/-. Hence the appellant are liable to pay service tax on the net taxable value of Rs. 61,44,851/- (Rs. 30 % of Rs. 87,78,359/-)

In relation to the demand on other Misc./Operating Income, the appellant claim that these are pertaining to the income booked under kasar- vatav, and other discounts received during the course of sales of cars and sales of spare parts and accordingly the said income is not taxable. The Appellant asserts that the income is unrelated to services, emphasizing it arises from kasar- vatav, and discounts, thus contending no service tax liability



exists. The appellant is a car dealer engaged in the business of selling cars. Hence the contention of the appellant that the miscellaneous/ operating income pertains to sale of cars is acceptable. Hence, the appellant are not liable to pay service tax on revised "other Misc./Operating Income" amounting to Rs. 10,47,730/-.

E. Rent Income –Value involved Rs. 8,22,900/-

In respect of the service mentioned under Category E of the above shown table, as per the OIO I find that the appellant agree to pay service tax on Rs. 8,22,900/-.

F. RSA Income/Incentive–Value involved Rs. 1,21,493/-

In respect of the service mentioned under Category E of the above shown table, I don't find any arguments from the side to the appellant and therefore I will go with the finding of the adjudicating authority confirming demand on the value of Rs. 1,21,493/-. Hence the appellant are liable to pay service tax on Rs. 1,21,493/-.

G. Free Service Coupon/Reimbursement-Value involved Rs. 9,00,123/-

In respect of the service mentioned under Category G, in their submission at the appellate authority the appellant's contention is that the value of free service coupons was already included for in the sale of cars, and hence, no additional service tax should be imposed as it is a part of Trading activities and as per Section 66D of the Finance Act, 1994 it is exempted. I agree with the finding of adjudicating authority in respect to the appellant's argument about service tax not being applicable to the reimbursed amount did not hold merit, as both sales tax and service tax are distinct levies. Consequently, I find that the appellant are required to pay service tax on Free Service Coupon/ Reimbursement.



**H. Direct Income/Claim Income -Value involved Rs.
1,23,94,264/-**

In respect of the service mentioned under Category H in the above shown table, I find that the appellant has submitted that the amount of Rs. 1,23,94,264/- shown as Direct Income is actually sale discounts provided by the manufacturer on the quantum of sales. The same being related to sales is not part of any service rendered by the appellant. The adjudicating authority has himself acknowledged that it is a settled position of law that income earned on account of trade discount is not liable to service tax. I find that the main business of the appellant is selling cars which are goods and liable to VAT and Excise and is out of purview of service tax. Discount is related to sale price. Sale price of Cars is not liable to service tax. Therefore whether purchase price of the appellant increases or decreases, it is not amenable to service tax. Hence the appellant is not liable to pay service tax on the amount of Rs. 1,23,94,264/-

I. Accessory Sale (Service Tax) -Value involved Rs. 4,15,518/-

By no stretch of imagination accessories can be service. Accessories are goods. Being sale of goods they are out of purview of service tax. Hence service tax is not liable to be paid on accessory sale.

7. I concur with the observation of the adjudicating authority that the benefit of cum-tax-value cannot be extended to the appellant as the appellant have failed to fulfil the condition that the price of service tax is inclusive of service tax payable by them.

8. In view of the above discussion, I summarize the findings as under:

8.1. In respect to the Accident and Service Labour received/Labour Sale income, the appellant is liable to pay service tax along with interest and penalty on the residual amount of Rs.



2,16,903/- only.

8.2. In respect to the Commission Income of Rs. 11,59,47,805/- I find that the appellant is not liable to pay service tax on the amount of Rs. 4,01,66,100/- being commission amount received from insurance companies who are liable to pay service in reverse charge (RCM)

8.3. In respect to the Service Contract (AMC) income, the appellant is liable to pay the service tax on the net taxable value of Rs. 61,44,851/- only with interest and penalty.

8.4. In respect to the Other Miscellaneous Income, the appellant is not liable to pay the service tax on the net taxable value of Rs. 10,47,730/-. Hence question of interest and penalty also does not arise.

8.5. In respect to the Rent Income amounting to 8,22,900/- & RSA Income/Incentive amounting to Rs. 1,21,493/- the appellant is liable to pay service tax along with interest and penalty.

8.6. In respect to the Free Service Coupon/Reimbursement, the appellant is liable to pay the service tax on the value of Rs. 9,00,123/- along with interest and penalty.

8.7. In respect to the Direct Income/Claim Income, the appellant is not liable to pay the service tax on the value of Rs. 1,23,94,264/- . Therefore question of interest and penalty does not arise.

8.8. In respect to the Accessory Sale, the appellant is not liable to pay service tax. Hence question of interest and penalty does not arise.

Above findings are summarized in the below shown table:

Cat.	Income heading	Total Taxable value as	Taxable Income as per	Remarks



		per OIO	the findings of OIA	
A	Accident and Service Labour received/Labour Sale	216903	216903	S.Tax was already paid except the taxable value of Rs. 2,16,903/-
B	Commission Income	64453927	Nil	Not liable to pay S.Tax on Rs. 4,01,66,100/- as the recipient is liable to pay under RCM. The SVLDRS matter for remaining amount is pending before the Hon'ble High Court.
C	Service Contract (AMC)	1682685	6144851	S.Tax is liable to be paid on abated value Rs. 6144851/- (30% of Rs. 87,78,359/-)
D	Other Misc./Operating Income	8143404	NIL	Not liable to pay.
E	Rent Income	822900	822900	Liable to pay
F	RSA Income/Incentive	121493	121493	Liable to pay
G	Free Service Coupon/Re-imbursment	900123	900123	Liable to pay
H	Direct Income/Claim Income	12394264	NIL	Not liable to pay
I	Accessory Sale (Service Tax)	415518	NIL	Not liable to pay
	Total	89151217	8206270	

9. In view of the above discussion, the order-in-appeal is passed as under:

9.1. I order to uphold the demand on the taxable value of Rs. 82,06,270/- along with interest and penalty.

10. अपीलकर्ता द्वारा दायर अपील का निपटान उपरोक्त तरीके से किया जाता है।

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

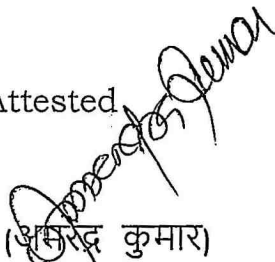


(ज्ञानचंद जैन)
आयुक्त (अपील्स)

Date : 29.02.2024



Attested


(अनुराग कुमार)
अधीक्षक (अपील्स)
सी.जी.एस.टी, अहमदाबाद



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(For uploading the OIA)

25) Guard File

6) PA file



