Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.11812 of 2016

(Arising out of OIO-KCH-EXCUS-000-COM-05-06-16-17 dated 20/05/2016 passed by Commissioner of Central Excise and Service Tax-KUTCH (GANDHIDHAM))

B M Autolink **.....Appellant**
Plot No.30-35,
Sector-10-C, Gandhidham,
KUTCH, GUJARAT

VERSUS

C.C.E.-Kutch (gandhidham) **.....Respondent**
Central Excise & Service Tax Commissionerate, Centeral Excise Bhavan Plot No. 82, Sector 8, Gandhidham(Kutch), Gujarat

APPEARANCE:
Shri Vikas Mehta, Consultant for the Appellant
Shri Vijay G. Iyengar, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 11748 /2022

DATE OF HEARING: 14.11.2022
DATE OF DECISION: 28.11.2022

RAMESH NAIR

The issue involved in the present case is that whether the discount given by M/s. Maruti Suzuki India Ltd. to the appellant in connection with sale of vehicles which was further sold by the appellant on principal to principal basis has to be considered as service charges towards Business Auxiliary Service and the same is liable for service tax or otherwise.

02. Shri Vikas Mehta, learned Consultant appearing on behalf of the appellant at the outset submits that this issue is no longer under dispute as this tribunal in various judgments decided the same issue in favour of the assessee. Reliance is placed on the following judgments:-

- Roshan Motors Pvt. Ltd.- 2022 (8) TMI 1254-CESTAT NEW DELHI
- Rohan Motors Ltd.- 2021 (45) GSTL 35 (Tri.-Del.)
- My Car Pvt. Ltd.- 2015 (40) STR 1018 (Tri.-Del.)
- M/s. B.M. Autolink vide Order-in-Appeal No.KCH-EXCUS-000-APP-064 TO- 065-2019 dated 19.06.2019

- M/s. B.M. Autolink vide Order-in-Original No.01/ST/Supdt./2020-21 dated 25.11.2020.

03. Shri Vijay G. Iyengar, learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. We find that the fact is not under dispute that the appellant being a dealer purchase the vehicles from M/s. Maruti Suzuki India Ltd. and subsequently sell the same to various customers. The transaction between M/s. Maruti Suzuki India Ltd. and the dealer and subsequently sale transaction between the dealer and the customs are purely on principal to principal basis. The vehicle manufacturer M/s. Maruti Suzuki India Ltd. on the basis of yearly performance of sale grants the discount to the dealer, this discount is nothing but a discount in the sale value of the vehicle sold throughout the year therefore, these sales discount in the course of transaction of sale and purchase of the vehicles hence, the same cannot be considered as service for levy of service tax. This issue is no longer res-integra as the same has been decided in various judgments cited by the appellant.

- ROSHAN MOTORS PVT. LTD- 2022 (8) TMI 1254- CESTAT NEW DELHI

"6. The sole issue that arises for consideration is whether service tax would be leviable on incentives and discount support extended by the manufacturer of vehicles, to authorized dealer - appellant for the period July, 2012 onwards.

7. It is noticed that the appellant purchases vehicles from TML and sells the same to the buyers. It is clear from the agreement that the appellant works on principal to principal basis, and not as an agent of TML. This is for the reason that the agreement itself provides that the appellant has to undertake certain sales promotion activities as well. The carrying out of such activities by the appellant is for the mutual benefit of the business of the appellant, as well as the business of TML. The position in this regard is fairly settled as held by the Hon"ble Supreme Court in the matter of case of ***Moped India Ltd. vs. CCE reported at 1986 (23) E.L.T. 8 (SC).****The amount of incentives and discount support received on such account cannot, therefore, be treated as consideration for any service. The incentives and discount support received by the appellant cannot, therefore, be leviable to service tax.*

8. In this connection, reference needs to be made to the decision of the Tribunal in ***Rohan Motors Ltd.-2021 (45) G.S.T.L. 315 (Tri.-Del.)*** *(supra), wherein, referring to earlier decision of the Tribunal in respect of same appellant reported as* ***Rohan Motors Ltd. v. Commissioner — 2018 (7) TMI 29-CESTAT New Delhi****, which is a case relating to the appellant, but for the period prior to July, 2012. The Tribunal observed as follows:*

"As per the agreement with MUL, the appellant has received various incentives/discounts/bonus etc. from MUL from time to time. The income received under these heads was accounted by the appellant in their books of account as "miscellaneous income". During the course of audit of the books of account of the appellant, the Department noticed such Misc. income and took the view that such amounts received by the appellant from MUL are consideration towards promotion and marketing of the vehicles manufactured by MUL and such consideration is liable for payment of Service Tax under the category of Business Auxiliary Service. By taking the above view, show cause notice dated 17-10-2011 was issued covering the period 1.4.2006 to 31.3.2011. Further, show cause notice dated 9-10-2012 was issued covering the period 1-4-2007 to 31-3-2012. The proceedings initiated under the above show cause notices resulted in the issue of two impugned orders, which are under challenge in the present appeals. Since the issue involved is common, these appeals are disposing of with this common order.

The demands have been raised by Revenue through the two impugned orders covering overlapping periods. Demand has been made under the category of Business Auxiliary Service for the amounts received by the appellant from M/s. MUL. Such amounts have been received towards incentives/discounts in connection with the sale of the vehicles manufactured by MUL. In addition, certain amounts have also been received by the appellant towards Registration/Number Plate etc. to facilitate the buyers of vehicles. All the above amounts have been charged under BAS. Certain amount of Service Tax has also been demanded under the category of GTA in respect of freight paid by the appellant towards transport of vehicles from their dealership to the customers" premises."

9. The Tribunal placed reliance on an earlier decision of the Tribunal in Toyota Lakozy Auto (P.) Ltd. - 2017 (52) S.T.R. 299 (Tri. - Mumbai) and observed.

"4. From a perusal of various case laws relied by the appellant, we note that the discounts/incentives received by the appellant from MUL cannot be made liable for payment of Service Tax under BAS, since the appellant is purchasing the cars from MUL on principal to principal basis and subsequently, reselling the same.

5. Revenue has ordered for payment of Service Tax under various receipts recorded under miscellaneous income. These include loading/unloading charges, Pollution Checkup charges, penalty-cum processing charges etc. It is obvious that these amounts have been received not towards provision of any service on behalf of MUL or anybody else. Consequently, there is no justification for levying Service Tax under BAS.

6. In miscellaneous income, commission amounts received from ICICI have also been included. This commission has been received for provision of furniture to ICICI for facilitation of accommodating representatives in the premises of the appellant for selling insurance policies for cars. Such an activity cannot be considered under BAS as has been held by the Larger Bench in the case of Pagadiya Auto Centre (supra). Consequently, we set aside the demand of Service Tax on such commission received.
7. A portion of the demand also has been raised under the category of GTA. The appellant has paid the freight expenses in connection

> *with transportation of Cars to their customers. However, they have not issued any consignment notes which are necessary to identify the appellant as a goods transport agency. As per the views expressed by the Tribunal in the case of South Eastern Coal Fields Ltd. (supra), in the absence of consignment notes, the activity of the appellant cannot be classified under GTA service. Consequently, we set aside the demand under GTA service."*

10. The same view was taken by the Tribunal in ***CST v. Sai Service Station Ltd. - 2013 (10) TMI 1155-CESTAT Mumbai = 2014 (35) S.T.R. 625 (Tribunal)****.*

11. 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. (own matter). 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."*

12. The Department, in the present case have erred in taking a different view. The service tax on the amount received as incentives could not, therefore, have been levied to service tax.
13. Thus, in view of our findings, it is not possible to sustain the impugned order dated 28.02.2019 passed by the Commissioner. It is, accordingly, set aside and the appeal is allowed.

From the above judgment, which has considered other decisions also, it was categorically held in the identical situation, the amount received as discount/incentive from the vehicle manufacturer by the appellant being the dealer is not liable to service tax.

4.1 There is a force in the submission of learned Consultant Mr. Mehta that in their own case for different period, the learned Commissioner (Appeals) vide Order No. KCH-EXCUS-000-APP-064 TO- 065-2019 dated 19.06.2019 set aside the Order-In-Original demanding the service tax on the same activity and allowed the appeal. This order has been accepted by the department and following the same for a subsequent period, the Superintendent- CGST, Kandla vide Order No. 01/ST/Supdt./2020-21 dated 25.11.2020. dropped the proceedings. This shows that the department has accepted that no service tax was payable on the discount received by the appellant.

05. As per our above discussion and findings, the impugned order is not sustainable hence, the same is set aside. Appeal is allowed.

(Pronounced in the open court on 28.11.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul