

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH

Service Tax Appeal No. 85373 of 2016

(Arising out of Order-in-Original No. 47/ST/NGP-II/2015/C dated 30.11.2015 passed by the Commissioner of Customs & Central Excise, Nagpur-II)

M/s. Jaika Motors Ltd.

Jaika Building,

Commercial Road,

Civil Lines, Nagpur-440 001

.....Appellant

VERSUS

.....Respondent

Commissioner of Central Excise, Nagpur-II

Kendriya Utpad Shuka Bhavan,

Telanghedi Road,

Post Box No. 81, Civil Lines,

Nagpur-440 001

APPEARANCE:

Shri Shalilendra Jain, Chartered Accountant for the Appellant.

Shri S. B. P. Sinha, Superintendent, Authorised Representative, for the Respondent.

CORAM:

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

FINAL ORDER NO. 86999/2023

Date of Hearing: 13.09.2023

Date of Decision: 16.10.2023

PER: DR. SUVENDU KUMAR PATI

Conformation of Service Tax demand against the Appellant for Rs.3,93,44,535/- alongwith interest and penalties under Sec 77 and 76 of the Finance Act, 1994 under the heading 'Business Auxiliary Service' by the Commissioner on the amount received by it as incentive in respect of sale of goods is assailed in this service.

2. Brief fact of the Appellant's case is that it is a dealer of M/s Tata Motors engaged in sale of cars and providing service as authorized

service station to the car purchasers of Tata Motors as well as other related services including arrangement of finance etc. against which it has been receiving commission and paying Service Tax for the service component under the heading 'Business Auxiliary Service' as defined under Section 65 of the Finance Act, 1994. During scrutiny of records and reconciliation of the amount received by the noticee, it was observed that Appellant had received incentives from M/s Tata Motors Ltd. but had not paid Service Tax on the incentive amount. Accordingly, for the initial period between 2005 to 2010 show cause notice was issued demanding Service Tax on the incentive amount with interest, penalty etc. and for subsequent Financial years Statement cum Show Cause notices were issued. This appeal relates to the period from 1.04.2013 to 31.03.2014.

3. During course of hearing of this appeal Learned Chartered Accountant for the Appellant Mr. Shalilendra Jain submitted that the issue is no more *res integra* in view of several decisions of this Tribunal including three orders passed by this Bench in respect of this Appellant for the prior periods between 04.11.2016 and 23.05.2018. In submitting copies of the order passed by this Tribunal on 23.05.2018 in appeal no. ST/85314/2014 and appeal no. ST/282,652/2012 passed by this Tribunal on 04.11.2016, he further submitted that placing reliance on previous judgment passed by this Tribunal including the order in *M/s Sai Service Station Ltd.*, reported in 2014 (35) STR 625 (Tri-Mum) and *My Car Pvt. Ltd.* reported in 2015 (40) STR 1018 (Tri-Del), these two orders were passed and the present appeal corresponds to the subsequent

period notice issued under Section 73 (1A) of the Finance Act, 1994 that has reference to the grounds raised in the earlier notices and since, demand against those notices were set aside, the present conformation of demand by the Commissionerate is also liable to be set aside.

4. In response to such submissions, Learned AR for the Respondent-Department Mr. S. B. P. Sinha argued in favour of the reasoning and rationality of the order passed by the Commissioner while acknowledging that for the earlier period Tribunal has set aside the demands against which reportedly no appeal is filed by the Revenue so far.

5. We have gone through the case record and relied upon judgments. It is noticed that Learned Commissioner had distinguished the *ratio* of M/s Sai Service Station Ltd., cited (Supra) in stating that in that case incentives were paid in connection with sale of excisable goods by the manufacturer to the dealer which were held as 'trade discount' but the same is not the situation in case of the present Appellant. Such an observation appears to be erroneous for the reason that in the summary of the incentive received, which is annexed to the notice under Sec 73 (1A), clearly indicates that against purchase of 4 items namely vehicles and it's components, incentives were given to the Appellant and the same can't be considered as paid against any service since paid against sale of goods. This being the facts on record and in carrying forward the judicial precedent set by this Tribunal and in order to ensure

consistency and predictability to the orders passed by this Tribunal, the following order is passed.

THE ORDER

6. The appeal is allowed and the order passed by the Commissioner in Order-in-Original No. 47/ST/NGP-II/2015/C dated 30.11.2015 is hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 16.10.2023)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)