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

REGIONAL BENCH- COURT NO.3

**Excise Appeal No. 1454 of 2011**

(Arising out of OIA-RKA/297/SRT-I/2011 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

**M/s. Empire Motors P Ltd** ........**Appellant**
Opp. Govardhan Haveli, Surat Dumas Road,
SURAT, GUJARAT.

*VERSUS*

**C.C.E & S.T ,-Surat-i** .......**Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar, Surat,
Gujarat-395001

**APPEARANCE:**
Sh. Navin Gheewala, Consultant for the Appellant
Sh. G. Jha, Authorised representative for the respondent

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

**Final Order No. A/ 11108 /2019**

DATE OF HEARING: 03.07.2019
DATE OF DECISION: 03.07.2019

**RAMESH NAIR**

The appellant is dealer of General Motors, they are purchasing the cars and selling the same to the ultimate customers. At times to promote the sale, the General Motor is giving incentives to the appellant which the appellant is passing on in the form of discount to the ultimate customers. The case of the department is that the incentive given by the General Motors to the appellant is liable to service tax under Business Auxiliary Service and accordingly, demanded the service tax. There is another issue i.e. brokerage received by the appellant from the various banking/ financial institution for promotion of sale of Finance product of the financial institution to the customer, on which service tax was demanded.

2. Sh. Navin Gheewala, Ld. Consultant appearing for the appellant submits that the incentive is nothing but a discount on purchase of car with subsequently passed on to the car purchaser in the form of discount, therefore, the amount which was levied service tax is not a service charges but the trade discount in the process of purchase and sale of the car, he placed reliance on the judgment of P. Gautam & Co. Vs. Commissioner of Service Tax, Ahmedabad-2011 (24) STR 447 (Tri. Ahmd.). He also submits

that the period covered is 2004-05 and SCN was issued on 03.09.2009. Since, there is no suppression on the appellant's part, demand of extended period is also not sustainable. He referred to the Chartered Accountant certificate wherein certified that the incentive receives by the General Motor was passed on to the car purchaser in the form of trade discount.

3. Sh. G. Jha, Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He specifically pointed out that regarding this trade discount no document was produced before the lower authority, the Chartered Accountant certificates which was produced before this Tribunal not presented before the adjudicating authority as well as Commissioner (Appeals).

4. We have considered the submissions made by both the sides and perused the records. We find that the appellant could not establish on the basis of document before the lower authorities that the so called incentive is nothing but the trade discount received from the General Motor and subsequently passed on to the car purchaser. The Chartered Accountant certificate produced before us was not available before the lower authorities, therefore, in our considered view, the matter needs to be re-considered.

5. Accordingly, we set aside the impugned order and allow the appeal by way of remand to the adjudicating authority for passing afresh order, after considering the Chartered Accountant certificate and also any additional submissions to be made by the appellant. Needless to say that before passing the de-novo adjudication order, the adjudicating authority shall grant sufficient opportunity for personal hearing to the appellant. Since, the matter pertains to the old period the adjudicating authority is expected to pass a de-novo order within 3 months from this order.

(Dictated & Pronounced in the open court)

**(RAMESH NAIR)**
**MEMBER (JUDICIAL)**

**(RAJU)**
**MEMBER (TECHNICAL)**

Prachi