CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No.472 of 2012

(Arising out of Order-in-Original No.01/2012/ST dated 16.01.2012 passed by the Commissioner of Central Excise, Customs and Service Tax, Cochin)

Popular Motor World Pvt. Ltd.,
33/2361-A, Geethanjali Junction,
N.H. Bypass Vytilla,
Cochin – 682 019.
Kerala

Appellant(s)

VERSUS

Commissioner of Central Excise and Service Tax,
C.R. Building, I S Press Road,
Ernakulam,
Cochin- 682 018.
Kerala.

Respondent(s)

WITH

Service Tax Appeal No.26521 of 2013

(Arising out of Order-in-Original No.34/2013-ST dated 25.03.2013 passed by the Commissioner of Central Excise, Customs and Service Tax, Cochin)

Popular Motor World Pvt. Ltd.
33/2361-A, Geethanjali Junction,
N.H. Bypass Vytilla,
Cochin – 682 019.
Kerala

Appellant(s)

VERSUS

Commissioner of Central Excise and Service Tax,
C.R. Building, I S Press Road,
Ernakulam,
Cochin- 682 018.
Kerala.

Respondent(s)

APPEARANCE:

Mr. P.M. Veeramani, Chartered Accountant for the Appellant

Ms. Money Jain, Joint Commissioner and Mr. Vinod Kumar Garhwal, Superintendent, (AR) for the Respondent

CORAM: HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21492 - 21493 /2025

DATE OF HEARING: 22.07.2025
DATE OF DECISION: 22.07.2025

PER : R. BHAGYA DEVI

Briefly the facts are that the appellant M/s. Popular Motor World (P) Ltd., are authorised dealers of M/s. Hyundai Motor India Ltd., (HMIL) for sales and services of passenger cars as per the agreement entered into with the manufacturer of cars. The Commissioner in the impugned orders have confirmed the demand of service tax under 'Business Auxiliary Service' observing that the appellant was promoting and marketing the sale of the cars manufactured by HMIL and the incentives/commission received by them was for undertaking business promotion activities. Aggrieved by these orders, the appellant is in appeals before us.

2. The Learned Counsel on behalf of the appellant submits that the dealership agreement entered into with HMIL is on principal-to-principal basis and as dealers they become eligible for discounts on all models of cars on achieving the purchase targets. These discounts are trade discounts and hence, they cannot be considered as commission for promotional activities and accordingly, not liable for service tax. He also relied on the decision in the case of **Jubiliant Motor Works (South) Pvt. Ltd. vs. Commissioner of GST and Central Excise, Chennai: 2024 (17) CENTAX 239 (Tri-Mad.)** dated 05.02.2024, wherein in a similar set of facts, it was held that 'the sale/target incentive/incentive on sale of vehicles and incentive on sale of spare parts received by assessee, could not be considered as rendering of Business Auxiliary Service'. It is also submitted that extended period of limitation is not applicable since their books of accounts for the relevant period was verified by the audit in November 2010 and they were filing regular returns and

discharging service tax, hence, the demand for the period 2005-06 to 2009-10 cannot be sustained.

3. The learned Authorised Representative (AR) for the Revenue reiterating the findings of the Commissioner held that the appellant is liable to pay service tax under 'Business Auxiliary Service'.

4. Heard both sides. We find that the issue is no longer *res integra* in view of the fact that this Tribunal in number of cases has held that the activity undertaken by the appellant is for sale and purchase of the vehicle and the incentives received are in the nature of trade discounts, hence, they are not liable to pay service tax under the category of 'Business Auxiliary Service'. This Tribunal in a similar set of facts in the case of **Bangalore Motors Pvt. Ltd. Vs. CCE: (2024) 22 Centax 411 (Tri.-Bang.)** has held as follows:

> "9. The issue is no longer res integra and as referred to by the Learned Counsel for the appellant the same has been considered and decided in favour of the assessee in the following cases :
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> (i) Rohan Motors Limited v. Commissioner of Central Excise [2021 (45) G.S.T.L. 315 (Tri. - Del.) = [2020] 122 taxmann.com 24 (New Delhi - CESTAT)
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> (ii) T.V. Sundram Iyengar & Sons Pvt. Ltd. v. Commissioner of CGST & C. Ex., Madurai [2021 (55) G.S.T.L. 144 (Mad.)]
>
> (iii) B.M. Autolink v. Commissioner of Central Excise [2022-VIL-900-CESTAT-AHM-ST]
>
> (iii) Roshan Motors Pvt. Ltd. v. Commissioner of Central Excise [2022-VIL-654-CESTAT-DEL-ST]
>
> (v) Anand Motor Agencies Limited v. Commissioner of Customs [2022-VIL-116-CESTAT-ALH-ST]
>
> (vi) Kafila Hospitality and Travels Pvt. Ltd. v. Commissioner of Service Tax [2021 (47) G.S.T.L. 140 (Tri. - LB) = [2021] 125 taxmann.com 309 (New Delhi - CESTAT)
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> 10. That all the above cases relates to dealership agreement between the manufacturer of motor vehicles (MUL, MSIL, TML) with their dealers for sale purchase of vehicles. In terms of the agreement it has been noticed that the dealer works on principal to principal basis and not as an agent

of the manufacturer. The agreement itself provides for certain sales promotion activities which are for the mutual benefit of the business of the manufacturer as well as the dealer. The observations of the Ahmedabad Bench of the Tribunal in B.M. Autolink (supra).

> *"4. We have carefully considered the submissions made by both the sides and perused the records. We find the fact is not under dispute as 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 end customers 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."*

11. The Larger Bench of this Tribunal in the case of Kafila Hospitality and Travels Pvt. Ltd. (supra) dealt with the issue whether service tax can be levied under the category of 'Business Auxiliary Service' on target based incentives paid to the travel agents by the Airlines as they were promoting and marketing the business of the Airlines. The Tribunal took the view that it is not a case where the air travel agent is promoting the service of the Airlines rather by sale of airlines ticket he was ensuring the promotion of its own business even though this may lead to incidental promotion of the business of the Airlines. On the issue, whether 'incentive' paid for achieving target are taxable, the Tribunal analysed the scope of the term 'incentives' that they are generally given to encourage performance of the party. It is relevant to appreciate the observations made in the said judgment :

> *"77. Consideration, which is taxable under section 67 of the Finance Act, should be transaction specific. Incentives, on the other hand, are based on general performance of the service provider and are not to be related to any particular transaction of service. It needs to be noted that commission, on the other hand, is dependent on each booking and not on the target. If the air*

travel agent does not achieve the predetermined target, incentives will not be paid to the travel agents.

78. In this connection it will be appropriate to take note of the decision of the Federal Court of Australia A.P. Group. The Federal Court of Australia held that in order to levy tax, the payment must be attributable to a particular supply and not to supplies in general and so the target incentives paid by a motor vehicle manufacturer to a dealer would not qualify as consideration as the incentives would be in relation to all supplies and not in relation to a particular supply. The relevant portion of the decision of the Federal Court is reproduced below :-

53. On analysis, the so-called supplies for consideration identified by the Commissioner are nothing more than the encouragement of an overall business relationship between the manufacturer and the dealer to the mutual benefit of both. The relationship involves a whole raft of obligation from one to the other all, presumably, with the ultimate objective of maximizing their respective commercial positions. As the A.P. Group put it, the overall relationship contemplates a continuing dialogue between wholesaler and retailer in which promises are routinely exchanged, but to characterize this dialogue as involving supply after supply is unrealistic and impractical. To characterize the payment of the incentives intended to encourage the overall relationship to operate efficiently as involving supplies for consideration equally unpersuasive. A dealer will always wish to sell as many cars as practicable and to move old stock to make way for new stock. So too a dealer will always wish its ordering arrangements to be the most efficient and economically beneficial to it. The manufacturer will have the same objectives. It is this context which underpins the Tribunal's conclusion that the payments are not for the supply of anything by the dealer. As the Tribunal said at [86] the dealer (which must be inferred to act in an economically rational manner in the ordinary course) will always want to run the business in this way. The fact that the dealer receives a payment as an incentive when certain thresholds associated with running the business in this way does not mean that the dealer is supplying a service to the manufacturer for *consideration. If the incentive payment were not available there is no basis to infer that the dealer would not behave in the same way for free. For these reasons there cannot be said to be any supply for consideration in these arrangements.*

(Emphasis supplied)

12. As a matter of judicial discipline the aforesaid decisions are binding on us and in light thereof we find that the present case is squarely covered by the law laid down in those judgments. We have examined the dealership agreement entered between MSIL and the appellant and we find that MSIL is engaged in manufacturing, marketing and selling of motor vehicles and the appellant purchases the vehicles from the manufacturer as their authorised dealer on principal to principal basis. The relevant clause is quoted herein below :

"C. MSIL having considered the representations made and the application submitted by the Dealer agrees to appoint the Dealer as the Authorised Dealer. It is made clear that MSIL would sell the products and parts to the dealer on principal to principal basis. The dealer would sell the products and parts and would provide service to the customers (which would include, but not be limited to, the service in terms of the warranty as per the owner's manual provided by MSIL from time to time) which promotes and maintains customer confidence and customer satisfaction on the terms and conditions mutually agreed to between the parties and contained in this agreement."

13. We also find that the activity undertaken by the appellant is for the sale and purchase of the vehicle and the incentives are in the nature of trade discounts. The incentives, therefore form part of the sale price of the vehicles and have no correlation with the services to be rendered by the appellant. That in terms of the dealership agreement, the appellant purchases the vehicles from MSIL and sells the same to its end customers. The activity of promoting the sale is with respect to the vehicles owned by the appellant which incidentally is in interest of both the parties. Reliance is placed on the observations referred above in the case of Kafila Hospitality and Travels Pvt. Ltd. (supra).

14. We also find that the appellant is engaged in the onward sale of vehicles which involves merely transfer of property in goods which is

excluded from the definition of 'service'. That Section 66D of the Finance Act, 1994 contains the negative list of services under various clauses and clause (e) provides for 'trading of goods'. On this ground also we find that incentives which are part of sale activity are not exigible to service tax.

The circumstances under which the incentives / discounts received by the appellant on purchase of cars from the manufacturer are more or less similar to the facts considered by the Tribunal in the case of Prem Motors Pvt. Ltd. (supra). Thus, following the said precedent, the demand of service tax confirmed on account of incentives / discounts received from the manufacturer by the appellant cannot be sustained".

In view of the above, since the dealership agreement between the appellant and the manufacturer of vehicles is on principal-to-principal basis, following the above judicial proceedings the impugned order is set aside and appeals are allowed.

(Operative portion of the order was pronounced in Open Court on conclusion of hearing.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

RV