CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No.1323 of 2012

(Arising out of Order-in-Original No.09/2012/ST dated 15.03.2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Cochin.)

M/s. Indus Motor Company Pvt. Ltd.,
City Towers, M.G. Road, Thevara,
Ernakulam,
Kerala-682 016.

Appellant(s)

VERSUS

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

Respondent(s)

AND

Service Tax Appeal No.27203 of 2013

(Arising out of Order-in-Original No.36/2013/ST dated 25.03.2013 passed by the Commissioner of Central Excise, Customs & Service Tax, Cochin.)

M/s. Indus Motor Company Pvt. Ltd.,
City Towers, M.G. Road, Thevara,
Ernakulam,
Kerala-682 016.

Appellant(s)

VERSUS

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

Respondent(s)

APPEARANCE:

Mr. Unnikrishnan. V, Chartered Accountant for the Appellant.
Mr. Maneesh Akhoury, Assistant Commissioner (AR) for the Respondent.

CORAM: HON'BLE MR. D.M.MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20278 - 20279 /2026

DATE OF HEARING: 28.08.2025 / 11.09.2025
DATE OF DECISION: 26.02.2026

PER : D.M. MISRA

These two appeals have been filed against respective Orders-in-Original passed by the Commissioner of Central Excise, Customs and Service Tax, Cochin.

2. Briefly stated the facts of case are that the appellant are authorised dealers for selling and servicing of motor cars manufactured by M/s. Maruti Udyog Ltd. (MUL, for short). On audit of their records, it was noticed that during the period 2005-06 to 2009-10, the appellant received incentives from the manufacturers MUL on achieving the sales target. Alleging that the incentive received by the appellant from MUL is leviable to service tax under the category of Business Auxiliary Service(BAS), show-cause notice dated 20.10.2010 was issued demanding service tax of Rs.4,32,95,068/-, Education Cess of Rs.8,65,901/- and Secondary Higher Education Cess of Rs.2,67,661/-; inadmissible cenvat credit availed by the appellant amounting to Rs.1,18,54,241/- for the period April 2006 to March 2010; also wrongly availed cenvat credit of Rs.1,30,22,450/- along with interest and penalty. On adjudication, the said demands were confirmed. On similar allegations in appeal No. ST/27203/2013, show-cause notice dated 13.10.2011 demanding Rs.1,13,26,070/- under BAS; denial/reversal/demand of ineligible cenvat credit of Rs.16,64,809/- for the period from April 2010 to March 2011 along with interest and penalty. On adjudication, the said demands were confirmed with interest and penalty. Hence, these appeals.

3.1. At the outset, the learned advocate for the appellant has submitted that the appellant is one among various authorised dealers for MUL in Kerala. As per the dealership agreement which is common to all the dealers throughout India, the dealers were provided trade incentive from MUL which has been subject matter of demand of service tax pending in various Commissionerates in India. He has submitted that leviability of service tax on incentives received from vehicle manufacturers under BAS as alleged by the Revenue has been settled in favour of the assessee under various judgments of this Tribunal viz. (i) CCE, Mumbai-I Vs. Sai Service Station Ltd. [2014(35) STR 625 (Tri. Mum.)]; (ii) Popular Vehicles & Services Vs. CCE, Cochin [2020(120) Taxmann.Com 305 Cestat Bangalore]; (iii) Veer Prabhu Marketing Ltd. Vs. CCE, Jodhpur [Final order No.50105/2023 dated 06.02.2023 – CESTAT, Delhi]; (iv) Capital Cars Pvt. Ltd. Vs. CCGST, New Delhi [Final Order No.59874-59875/2024 dated 12.12.2024 ; CESTAT, New Delhi].

3.2. Further, he has submitted that even though they have placed on record the relevant input invoices on which credit has been availed, without considering the same, the Commissioner has confirmed denial of cenvat credit which is bad in law. In support, he has referred to the Annexure C to the appeal paper book enclosing the input invoices, documents etc. on the basis of which they have availed cenvat credit. Further, he has submitted that the appellant had already reversed credit on ineligible credit on telephone services and insurance charges, amounting to Rs.9,23,170/- along with interest Rs.2,13,799/-, which has been acknowledged in the impugned order.

4. Learned AR for the Revenue has reiterated the findings of the learned Commissioner.

5. Heard both sides and perused the records.

6. We find that the issue relating to leviability of service tax on incentives received from the car manufacturer MUL by appellant as a dealer is no more *res integra* and decided in favour of the assessee concerning the same set of agreement between the MUL and the appellant in a series of cases. Recently, in the case of Sai Service Private Ltd. Vs. CCE,C&ST, Cochin [Final order No.20160-20161/2026; CESTAT, Bangalore], this Tribunal also addressing the similar type of agreement and following the judgment in the case of Prem Motors Pvt. Ltd. [2023(73) GSTL 97 (Tri. Del.)], observed as follows:-

> 7. We find that the short issue involved in the present case is whether the incentives received by the appellant from the manufacturer MSIL in relation to sale of motor vehicles by reaching the sale target is leviable to service tax under the category of Business Auxiliary Service during the relevant periods. This issue is no more res integra which has been addressed by this Tribunal in the case of Bangalore Motors Pvt. Ltd. (supra). Following the principle of law laid down in the case of Prem Motors Pvt. Ltd. [2023(73) GSTL 97 (Tri. Del.)], this Tribunal held as follows:-
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> > 7. The facts not in dispute are that the appellant are authorized dealers of Volkswagen brand cars and also providing services of cars of the said brand. On purchase of the cars from the manufacturer Volkswagen Limited, they received various discounts / incentives on achieving the sales target during the relevant period. Applicability of service tax on trade discount / incentives received by an authorized automobile dealer from the manufacturer, is no more *res integra* and covered by a recent judgment of this Tribunal in the case of ***Prem Motors Pvt. Ltd. Vs. CCE&CGST, Jaipur*** (supra) wherein the Tribunal scrutinizing the case laws on the subject observed as follows:
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> > > ***8.*** *The issue which arises for our consideration is whether service tax is leviable on incentives/discount, reimbursement extended by MSIL to the appellant.*
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> > > ***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 :

(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)

(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]

(iv) 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)

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."*
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> ***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).*
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> ***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.

8. Similar view has been expressed by Bombay Bench of this Tribunal in the appellant's own case vide Final order No.FO/ST/A/86995-86997/2023-ST (DB) dated 09.10.2023, wherein it is held as follows:-

> 5. It is an admitted fact on record that the appellants had earned the incentives on achieving the sales turnover of the vehicles. The said fact has also been admitted by the original authority at paragraph 19.2 in the impugned order dated 31.10.2017, wherein he had held that such incentives were offered by M/s MSIL to the appellants for achieving certain sales targets. The modus operandi adopted by the appellants for making transaction with M/s MSIL remain the same all along, before the amendment of service tax statue prior to 01.07.2012 and the period subsequent thereto under the 'negative list' regime. Thus, in our considered view,

for the similar set of facts, views cannot be changed to hold that no service tax is leviable for the prior period and liability can be fastened with effect from 01.07.2012 under the negative list.

6. In the present case, since there is no element of service involved in the transactions between the appellants and M/s MSIL, it cannot be said that there is provision of taxable service, for the purpose of levy of service tax. We have also perused the periodic VAT returns filed by the appellants together with the audited Profit & Loss account and the Balance-Sheet. It transpires from the said statutory records that the appellants have reflected the particulars of total sales of vehicles and profit earned towards such transactions. The fact is also not under dispute that the appropriate authorities under the VAT statue have accepted the transaction particulars reflected by the appellants in the records as 'sale of goods'. Since, the statutory records maintained by the appellants and the terms of the agreements are manifestly clear that the transactions are on principal-to-principal basis, we do not find any logic for acceptance of the position that the disputed transactions should be considered as 'service' for payment of service tax thereon inasmuch as the transaction is a Pure Sale transaction, involving sale and purchase of goods and no element of service involved therein. Therefore, we are of the considered view that the ratio of the decision of the Tribunal (supra), would be applicable for non-payment of service tax for the transactions made by the appellants post 01.07.2012.

9. In view of the aforesaid judgments involving similar facts and circumstances, we are of the view that the impugned orders cannot be sustained. Consequently, the same are set aside and appeals are allowed with consequential relief, if any, as per law.

7. In view of the above consistent view of the Tribunal, the confirmation of demands of service tax under the category of BAS of Rs.4,32,95,068/-, Education Cess of Rs.8,65,901/- and Secondary Higher Education Cess of Rs.2,67,661/- during the period April 2005 to March 2009 & demands of service tax of Rs.1,09,96,184/-; Education cess of Rs.2,19,924/- and Secondary and Higher Education Cess of Rs.1,09,962/- for the period 2009-10 to 2010-11 with interest and penalty are hereby set aside.

8. On the issue of admissibility of cenvat credit on various

input services, we find that the appellant has enclosed with the appeal paper book all the relevant invoices / documents etc. in support of their claim, which need to be verified by the field formation. The Commissioner while denying the cenvat credit has observed that no supporting input credit documents placed for scrutiny in spite of a letter issued by the Range Superintendent. Since the appellant has produced the input invoices, documents etc., the same be verified and the admissibility thereof be decided. Consequently, the confirmation of demands of cenvat credit and also demands of service tax paid on utilisation of the said credit are set aside.

9. In the result, the impugned orders are modified and demands of service tax on the incentive received from MUL under BAS confirmed with interest and penalties in the orders are set aside. Regarding admissibility of cenvat credit, the issue is remanded to the adjudicating authority for verification of documents and decision on its admissibility. Appeals are disposed of in above terms.

(Order pronounced on 26.02.2026)

(D.M.MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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