CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO.III

Service Tax Appeal No.52931 of 2019

[Arising out of Order-in-Original No.JAI-EXCUS-000-COM-28-19-20 dated 17.09.2019 passed by the Principal Commissioner, CGST & Central Excise, Commissionerate, Jaipur]

M/s. Prem Motors Pvt. Ltd. ..... **Appellant**
Road No. 9, V.K.I. Area,
Jaipur - Rajasthan

VERSUS

Principal Commissioner of CGST & Central Excise Commissionerate ..... **Respondent**
NCR Building, Statue Circle,
C-Scheme, Jaipur – 302005 (Rajasthan)

WITH

Service Tax Appeal No. 52930 of 2019

[Arising out of Order-in-Original No.JAI-EXCUS-000-COM-28-19-20 dated 17.09.2019 passed by the Principal Commissioner, CGST & Central Excise, Commissionerate, Jaipur]

Mr. Arun Pareek ..... **Appellant**
(AGM – Finance) Prem Motors (P) Ltd.
Road No. 9, V.K.I. Area,
Jaipur - Rajasthan

VERSUS

Principal Commissioner of CGST & Central Excise Commissionerate ..... **Respondent**
NCR Building, Statue Circle,
C-Scheme, Jaipur – 302005 (Rajasthan)

APPEARANCE
Mr. Vishal Kumar, Ld. Counsel for the Appellant.
Shri Aejaz Ahmad, Authorised Representative of the Respondent

CORAM :
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO.50043-50044/2025

DATE OF HEARING: 07.01.2025
DATE OF DECISION: 09.01.2025

BINU TAMTA:

The issue in the present case is whether the discount or incentives given by Maruti Suzuki India Ltd (MSIL) to the appellant in connection with the sale of vehicles as per the Agreement and Circulars issued by MSIL from time to time would amount to 'consideration' received by the appellant in lieu of provision of service in the nature of "agreeing to the obligation to do an act". This issue has been decided in the case of the appellant itself by Final Order No. 50204 of 2023 dated 23.02.2023 following the earlier line of decisions on this issue, holding that the amount of incentives and discounts cannot be treated as consideration for any service, and therefore, no service tax is leviable thereon.

2. Briefly stated, the appellant by virtue of a Dealership Agreement is an authorised dealer of MSIL and is engaged in the business of selling motor vehicles and also operates as an authorised service station of MSIL. Show cause notice dated 12.04.2019 was issued by DGGI, Jaipur on the basis of an intelligence regarding non-payment of service tax by authorised dealers of MSIL in relation to payments received as incentives or discount reimbursement, which were in the nature of consideration for service and were classifiable as target based incentive schemes or non-target based incentive schemes during the period from 1.10.2013 to 30.06.2017. The adjudicating authority by the impugned order dated 17.09.2019 held that the amount of incentives or discounts received by the appellant appeared to be consideration received for doing an act, i.e., achieving the targets specified by MSIL and hence taxable as per the provisions of section 65B (44) and section 65B (51) of the Act. Being aggrieved, the appellant has filed the present appeal before this Tribunal.

3. The learned authorised representative for the revenue has very fairly conceded that the issue is no longer res-integra and has been decided in favour of the assessee in series of decisions of this Tribunal. In the case of the appellant itself, after referring to the decisions in, **(i) Rohan Motors Limited vs. Commissioner of Central Excise, (ii) TV Sundram Iyengar & Sons Pvt Ltd. vs. Commissioner of CGST & C.EX. Madurai, (iii) B M Autolink vs. Commissioner of Central Excise, (iv) Roshan Motors Pvt Ltd. vs. Commissioner of Central Excise, (v) Anand Motor Agencies Limited vs. Commissioner of Customs, (vi) Kafila Hospitality and Travels Pvt Ltd. vs. Commissioner of Service Tax,** we have observed as under:

> "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).**
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> > " 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."**
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> 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.
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> 78. In this connection it will be appropriate to take note of the decision of the Federal Court of Australia AP 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:-
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>> "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 manufacture 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 AP 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 manufacture 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 principle 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.

5. There is no difference in the facts of the present case and the earlier case of the appellant. Consequently, the findings arrived in the earlier decision are therefore squarely applicable and binding. Accordingly, the impugned order deserves to be set aside and the present appeal is hereby allowed.

6. The impugned order imposing penalty of Rs 1,00,000/- under section 78A of the Act on Shri Ankur Pareek is also not sustainable as the issue on merits has been decided in favour of the appellant. Therefore, the appeal filed by Shri Ankur Pareek needs to be allowed.

7. Both the appeals, accordingly, stands allowed.

(Order pronounced in the open court on 09.01.2025)

(BINU TAMTA)
MEMBER (JUDICIAL)

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(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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