

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –II

Service Tax Appeal No.ST/58152 / 2013 CU [DB]

[Arising out of Order-in-Original No.20/Meerut-I/2013 dated 11.03.2013 passed by the Commissioner, Central Excise, Meerut-I]

Rohan Motors Ltd.

...Appellant

Vs.

C.C.E., Meerut-I

... Respondent

Service Tax Appeal No.ST/51412 / 2014 CU [DB]

[Arising out of Order-in-Original No.66/Commr./Mrt.-I/2013 dated 07.11.2013 passed by the Commissioner, Central Excise, Meerut-I]

Rohan Motors Ltd.

...Appellant

Vs.

C.C.E., Meerut-I

... Respondent

Present for the Appellant : Mr.B.L. Narasimhan, Advocate
Mr.Narender Singhvi, Advocate
Present for the Respondent: Mr.R.K. Maji, D.R.

Coram: HON'BLE MR. V.PADMANABHAN, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing: 19.06.2018
Pronounced on : 29.06.2018

FINAL ORDER NO. 52355-52356/2018

PER: V.PADMANABHAN

The appeals are directed against the Order in Original
No. 20/2013 dated 11.03.2013 as well as Order-in-Original

No.66/2013 dated 07.11.2013. The appellant is a dealer of M/s. Maruti Udyog Ltd. (in short hereinafter called as "MUL") in respect of the cars manufactured by MUL. As per the agreement with MUL, the appellant has received various incentives/ discounts / bonus etc. from MUL from time to time. The income received under these heads was accounted by the appellant in their books of accounts as 'miscellaneous income'. During the course of audit of the books of accounts of the appellant, the Department noticed such Misc. income and took the view that such amounts received by the appellant from MUL are consideration towards promotion and marketing of the vehicles manufactured by MUL and such consideration is liable for payment of Service Tax under the category of Business Auxiliary Service. By taking the above view, show cause notice dated 17.10.2011 was issued covering the period 01.04.2006 to 31.03.2011. Further, show cause notice dated 09.10.2012 was issued covering the period 01.04.2007 to 31.03.2012. The proceedings initiated under the above show cause notices resulted in the issue of two impugned orders, which are under challenge in the present appeals. Since the issue involved is common, these appeals are disposing of with this common order.

2. Explaining the grounds of appeal Shri B.L.Narasimhan, Id. Counsel for the appellant submitted as follows:-

- (1) The consideration received by the appellant was in terms of various discounts/incentives scheme promoted by MUL. He emphasized the point that the

vehicles manufactured by MUL were purchased by the appellant on principal to principal basis and subsequently, sold as a dealer of MUL. The discounts/incentives received are not towards provision of any service and the Department is not justified in levying Service Tax on such income in the category of BAS.

- (2) The issue involved in the present appeals has been decided in favour of the appellant in several cases. In the case of **Commercial Auto Dehradun Pvt. Ltd. vs. Commissioner, Final Order No. 52080/2018 dated 23.05.2018 in Appeal No.ST/50649/2014**, the Tribunal took the view, in respect of another dealer of Hyundai who was similarly situated to the appellant. The Tribunal held that the Department was not justified in invoking the extended period of limitation and the case was remanded to the adjudicating authority for *de novo* decision of the demand falling within the normal time limit in view of the various decisions on the subject including that of the Larger Bench in the case of **Pagariya Auto Centre vs. Commissioner - 2014 (2) TMI 98 - CESTAT- New Delhi - LB**
- (3) In respect of the incentives received for activities such as registration of the vehicles and organizing the Number Plate, he referred to the recent decision of the Tribunal in the case of **Yash Motors - Final**

Order No. 52016/2018 dated 25.05.2018 in which the Tribunal has taken the view that the charges received and retained by the assesseees from Customers for facilitating RTO Registration is not chargeable to Service Tax under BAS.

- (4) With reference to the demand made under the category of GTA, he submitted that the appellant has organized for transportation of vehicles from their dealership to the premises of the customer by engaging other vehicles. In such cases they have paid the freight but he submitted that their activity is not in the nature of a goods transport agency and they have not issued any consignment notes. By relying on to the recent decision in the case of **South Eastern Coal Fields Ltd. – 2018 (10) GSTL – 50 (Tri.-Del.)**, he submitted that no Service Tax under the category of GTA is payable by the appellant.
- (5) With reference to the incentives received from ICICI, he submitted that such incentives were received towards providing space to facilitate the employees of ICICI to process such loans from the premises of the appellant. He referred to the Larger Bench decision in the case of **Pagariya Auto Centre (supra)** wherein it has been held that providing space with furniture to the representative of the financial

institutions in the premises of Automobile Dealer does not amount to BAS.

- (6) He also brought to our notice that the Jurisdictional Joint Commissioner against the same appellant for the subsequent period has dropped the demand of Service Tax under BAS. In this connection, he referred to the Jt. Commissioner's order dated 23.03.2017.

2. Ld. D.R. justified the impugned orders.

3. The demands have been raised by Revenue through the two impugned orders covering overlapping periods. Demand has been made under the category of Business Auxiliary Service for the amounts received by the appellant from M/s. MUL. Such amounts have been received towards incentives/discounts in connection with the sale of the vehicles manufactured by MUL. In addition, certain amounts have also been received by the appellant towards Registration/ Number Plate etc. to facilitate the buyers of vehicles. All the above amounts have been charged under BAS. Certain amount of Service Tax has also been demanded under the category of GTA in respect of freight paid by the appellant towards transport of vehicles from their dealership to the customers' premises.

4. From a perusal of various case laws relied by the appellant, we note that the discounts/incentives received by the appellant from MUL cannot be made liable for payment of Service Tax under BAS, since the appellant is purchasing the cars from MUL on principal to principal basis and subsequently, reselling the same. In the case of **Tyoto Lakozy Auto Pvt. Ltd. – 2017 (52) STR 299 (Tri.-Mumbai)** the Tribunal considered an identical issue. The observations of the Tribunal are reproduced below:-

"3. Appellant contends that Rs. 81,35,813/- and Rs. 1,21,47,133/- for the two periods has been wrongly subjected to tax because the agreement between the appellant and M/s Toyota Kirloskar Motor Limited is one of supply of vehicles by the latter on 'principal-to-principal' basis on which title and risk, as per Agreement are passed on to appellant when the vehicles are excise cleared and placed on common carrier. Depending on order quantity, the manufacturer raises invoices after according discounts which are designated as commission/incentive merely as a management terminology. Ld. CA for appellant places reliance in the decisions of the Tribunal in **Jaybharat Automobiles Limited vs. Commissioner of Service Tax, Mumbai [2015-TIOL-1570-CESTAT-MUM = 2016 (41) S.T.R. 311 (Tri.)]**, **Sai Service Station Limited vs. Commissioner of Service Tax, Mumbai [2013-TIOL-1436-CESTAT-MUM = 2014(35) STR 625 (Tri.)]**, **Tradex Polymers Private Ltd. vs. Commissioner of Service Tax, Ahmadabad [2014 (34) STR 416(Tri. – Ahmd.)]** and **Garrisson Polysacks Private Ltd. vs. Commissioner of Service Tax, Vadodara [2015 (39) STR 487 (Tri—Ahmd.)]**. In re **Jaybharat Automobiles Limited**, the Tribunal held that

"6.5 On the appeal by Revenue on the issue of incentives received by the appellant from the car dealer, we find that the relationship between the appellant and the dealer is on a principal to principal basis. Only because some incentives/ discounts are received by the appellant under various schemes of the manufacturer cannot lead to the

conclusion that the incentive is received for promotion and marketing of goods. It is not material under what head the incentives are shown in the Ledgers, what is relevant is the nature of the transaction which is of sale. All manufacturers provide discount schemes to dealers. Such transactions cannot fall under the service category of Business Auxiliary Service when it is a normal market practice to offer discounts/ institutions to the dealers. The issues is settled in the case of Sai Service Station (supra). Therefore, we reject the appeal of the department."

And in Sai Service Station Limited it was held that

"14. In respect of the incentive on account of sales/target incentive, incentive on sale of vehicles and incentive on sale of spare parts for promoting and marketing the products of MUL, the contention is that these incentives are in the form of trade discount. The assessee respondent is the authorised dealer of a car manufactured by MUL and are getting certain incentives in respect of sale target set out by the manufacturer. These targets are as per the circular issued by MUL. Hence these cannot be treated as business auxiliary service."

4. Ld. Authorized Representative reiterates the findings of the adjudicating authority. However, in view of the settled position in the decisions of the Tribunal supra, we hold that the discounts received on procurement of vehicles from the manufacturer are not liable to tax as 'business auxiliary services' and set aside the demand on that head."

By following the decision (Supra) we set aside the demand of Service Tax on incentives, loyalty bonus etc.

5. Revenue has ordered for payment of Service Tax under various receipts recorded under miscellaneous income. These include loading/unloading charges, Pollution Check-up charges, penalty-cum processing charges etc. It is obvious that these amounts have been received not towards provision of any service on behalf of MUL or anybody else. Consequently, there is no justification for levying Service Tax under BAS.

6. In miscellaneous income, commission amounts received from ICICI have also been included. This commission has been received for provision of furniture to ICICI for facilitation of accommodating representatives in the premises of the appellant for selling insurance policies for cars. Such an activity cannot be considered under BAS as has been held by the Larger Bench in the case of **Pagadiya Auto Centre (supra)**. Consequently, we set aside the demand of Service Tax on such commission received.

7. A portion of the demand also has been raised under the category of GTA. The appellant has paid the freight expenses in connection with transportation of Cars to their customers. However, they have not issued any consignment notes which are necessary to identify the appellant as a goods transport agency. As per the views expressed by the Tribunal in the case of **South Eastern Coal Fields Ltd. (supra)**, in the absence of consignment notes, the activity of the appellant cannot be classified under GTA service. Consequently, we set aside the demand under GTA service.

8. In the light of above discussions, we set aside the demand of Service Tax in both the impugned orders and allow both the appeals.

[Pronounced in the open Court on 29.06.2018]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

(V.PADMANABHAN)
MEMBER (TECHNICAL)

Anita