IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.497 of 2012

(Arising out of Order-in-Appeal No.131/JSR/2012 dated 22.08.2012 passed by Commissioner(Appeals) of Central Excise & Service Tax, Ranchi.)

M/s. Jayashree Motors Private Limited
(Plot No.IP, Adityapur Industrial Estate, Saraikela, Jamshedpur-832109, Jharkhand.)
...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Jamshedpur
.....Respondent
(Outer Circle Road, Bistupur, Jamshedpur, Jharkhand.)

<u>APPEARANCE</u>

Shri R.S.Bajaj, Chartered Accountant for the Appellant (s)
Shri J.Chattopadhyay, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

<u>FINALORDER NO. 77119/2023</u>

DATE OF HEARING : 18 September 2023
DATE OF DECISION : 18 September 2023

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order.

2. The facts of the case are that the appellant is authorized dealer of automobile manufacturer namely M/s. Ford India (P) Ltd. (FIPL). The appellant entered into an agreement with the manufacturer to deal with the manufactured product motor cars for marketing as well as special promotional scheme. Accordingly, the appellant purchased vehicles from the manufacturer on outright basis and sold them in its own right. Thus, the relationship between FIPL and the appellant was of a buyer and seller and the dealings between them were on principal to principal basis. As per the company's marketing as well as special promotional

scheme introduced from time to time through Dealer Confidential Bulletins (DCB), the appellant had extended the buyer related incentives to the ultimate customer and sought reimbursement of the same from FIPL. That while the buyer related incentives i.e. Fleet incentive, Free First Insurance Premium incentive, CSD incentive, exchange incentive, Direct Sales Associates/Consultant's incentives meant to lure/motivate customers/sales staff as per promotional schemes were reimbursed by the manufacturer on production of specified documents clearly establishing their passage to the respective buyer, wholesale/retail incentives were given either upfront or subsequently on performance basis as discounts to encourage the dealers. On top, all these incentives pertain to appellant's normal trading activity and linked to the sale of car and not to any service provided by the appellant. The Revenue is of the view that as these discount incentives are liable to be taxed under the category of 'Business Auxiliary Service', therefore, the proceedings were initiated against the appellant and the demand of service tax was confirmed. Aggrieved from the said order, the appellant is before us.

2. The Ld.Counsel for the appellant submits that the issue has been settled by this Tribunal in the case of Autobahn Enterprises Pvt.Ltd. v. Commissioner of Service Tax, Mumbai-I [2021 (9) TMI 534 – CESTAT MUMBAI], wherein this Tribunal observed as under :-

> ***"6.*** *From the decisions cited by Learned Chartered Accountant, we find that the dispute pertaining to discount offered to corporate customers has attained finality. In this connection, the decision of the Tribunal In Re : Toyota Lakozy Auto Pvt. Ltd., which has referred to the other two decisions, observing that :*
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> > *'2. Separate appeals have been preferred against twoorders-in-original pertaining to the period from July, 2004 to March, 2007 and from April, 2007 to March, 2011. The demands confirmed in the two appeals are ` 1,58,69,430/- and ` 1,57,12,236/-; the impugned order holds appellant liable to tax on commission*

earned on sale of cars, on facilitation charges collected from customers for registration of vehicles and commission foregone on loans marketed by appellant to customers. It is the contention of the appellant that these are not consideration leviable to tax and that, even if these are, the adjudicating authority has erred in computing the tax liability. As the issues in the two appeals are common, we dispose both by a common order.

Appellant contends that 3. ` 81,35,813/- and ` 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. Learned Chartered Accountant for appellant places reliance in the decisions of the Tribunal in Jaybharat Automobiles Limited v. Commissioner of Service Tax, Mumbai [2015-TIOL-1570-CESTAT-MUM = 2016 (41) S.T.R. 311 (Tri.)], Sai Service Station Limited v. Commissioner of Service Tax, Mumbai [2013-TIOL-1436- CESTAT-MUM = 2014 (35) S.T.R. 625 (Tri.)], Tradex Polymers Private Limited v. Commissioner of Service Tax, Ahmedabad [2014 (34) S.T.R. 416 (Tri. - Ahmd.)] and Garrisson Polysacks Private Ltd. v. Commissioner of Service Tax, Vadodara [2015 (39) S.T.R. 487 (Tri. - Ahmd.)]. In Re : Jaybharat Automobiles Limited, the Tribunal held that :

On the appeal by Revenue on the issue of "6.5 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 issue is settled in the case of Sai Service Station (supra). Therefore, we reject the appeal of the department."*

and In re Sai Service Station Limited it was held that

In respect of the incentive on account of "14. 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 authorized dealer of 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."

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To enable a re-visit of the taxability of 10. subvented amounts as well as the abovementioned accounting entries, we deem it appropriate that the matter be remanded to the original authority for deciding afresh on the last two issues. The other two issues are not the subject of this remand as they stand decided in favour of appellant.'

offers valid precedent.

***7.**Accordingly, the demand of ` 3,70,994/-, along with interest, and penalty under Section 78 of Finance Act, 1994 fails to survive.*

8.*Appellant has admitted and discharged liability arising on receipt of 'commission' from financial institutions and insurance companies. We take note that in the decision of the Tribunal In re Addis Marketing, the exposition of the Tribunal in Gemini Mobiles Pvt. Ltd. v. Commissioner of Central Excise & Service Tax, Lucknow [2015-TIOL-15670-CESTAT-ALL] which examined several aspects thus :*

> *'5. The conflicts came up for consideration before a Larger Bench inPagariya Auto Center v. C.C.E., Aurangabad and the legal position was clarified by the order dated 12-9-2013 reported in 2014 (33) S.T.R. 506 (Tri.-LB) = 2014-TIOL-141-CESTAT-DEL-LB. The Larger Bench answered the reference observing that the large number of decisions cited at the bar and in the order of reference to it, spelt out uniform principle to guide determination of whether a particular transaction involving an interface between an automobile dealer and a bank or a financial institution would per se amount to BAS. The Larger Bench clarified that identification of the transaction and its appropriate classification as BAS or otherwise must depend upon a careful analysis of the relevant transactional documents and only such scrutiny and analysis would ensure a rational classification of the transaction. The Tribunal pointed out that where mere space is provided along with furniture for facilitating accommodation of representatives of financial institutions in the premises of an automobile dealer and consideration is received for that singular activity, such consideration may perhaps constitute a rent for the provision of space and associated amenities and such transaction would not amount to BAS. Alternatively, held the Tribunal, if the transactional documents and other material on record indicate a substantial activity falling within the contours of any of the integers of the definition of BAS, spelt out in Section 65(19), then it would be legitimate to conclude that BAS is provided.*
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> *6. In the light of the Larger Bench ruling clarifying contours of BAS, in respect of transactions involving automobile dealers and*

banks or financial institutions, there was a bona fide doubt as to whether appellants herein had provided BAS during the relevant period in issue. Therefore non-filing of returns and non-remittance of tax for rendition of BAS could not be characterised as arising with a view to suppression of material facts or failure to remit tax with an intent to evade the same, inviting application of the extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994.

7.The period in issue in the present appeals is July, 2003 to November, 2005. Show cause notice was issued on 31-1-2006. Only part of the period is therefore within the normal period of limitation. In the light of the fact that there were conflicting decisions of the Tribunal which stood resolved by the Larger Bench decision in Pagariya Auto Center (supra), we are satisfied that invocation of the extended period was not justified. We so declared the position. The appellants are however liable to tax, interest and penalties for the normal period of limitation specified in Section 73.

for arriving at the conclusion of circumstances not being conducive to invoking of section 78 of Finance Act, 1994 is relevant.

9.*Furthermore, finality was accorded to tax liability by Circular No. 87/05/2006-S.T., dated 6th November 2006 of Central Board of Excise and Customs. In view of the circumstances and the stand taken by the Tribunal in these several decisions, invoking of the extended period for the purpose of imposition of penalty is not sustainable. Accordingly, the penalty imposed under Section 78 of Finance Act, 1994 is also set aside."*

3. On going through the above cited decision, we hold that the reimbursement expenses incurred by the appellant on account of various promotional scheme of the manufacturer, the appellant is not liable to pay service under the category of 'Business Auxiliary Service'.

Moreover, the appellant was having activity of trading of cars on principal to principal basis .

4. In that circumstances, the sales/target incentives received by the appellant are not liable to be taxed under the category of 'business auxiliary service' as it is an incentive earned by the appellant on sale of car. Therefore, no service tax is payable by the appellant.

5. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Operative part of the order was pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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