IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. III

Service Tax Appeal No.40681 of 2013

(Arising out of Order-in-Appeal No.SLM-ST-84-APP-2012 dated 28.12.2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Salem – 636 001.

M/s. S.K. Cars India (P) Ltd., **...Appellant**
No.3/392,
S.K. Complex, S.K. Nagar,
Seelanaickenpatti,
Salem 636 201.

Versus

Commissioner of GST & Central Excise, **...Respondent**
No.1, Foulk's Compound,
Anai Medu,
Salem – 636 001.

APPEARANCE:

For the Appellant : Mr. D. Jaishankar, advocate

For the Respondent : Ms. Anandalakshmi Ganeshram, Supdt. (A.R)

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

DATE OF HEARING : 01.06.2023
DATE OF PRONOUNCEMENT : 05.06.2023

FINAL ORDER No.40399/2023

Order : Per Ms. Sulekha Beevi C.S.

Brief facts are that the appellant is engaged in the business as dealer of Four Wheeler Motor cars of M/s. Maruti Udyog Ltd. and is registered as a service provider of Servicing of Motor Vehicles, Business Auxiliary Service and Goods Transport Agency Service. On verification of Ledgers, it was noticed that the appellant has received reimbursement of advertisement charges from M/s. Maruti Udyog Ltd, and M/s. Sundaram

Finance Ltd, for various promotional activities. The Department was of the view that such advertisement charges received for promotional activities of sale of four wheeler vehicles would fall within the ambit of Business Auxiliary Services under Section 65 (19) of the Finance Act, 1994. The appellants had also received amounts for the period 01.04.2008 – 31.03.2010 and for the period April 2010 to 31.03.2011 incentives from M/s. Maruti Udyog Ltd. The appellant had not discharged service tax on the incentives and the reimbursement expenses received by them. Show Cause Notice was issued proposing to demand Services Tax on the incentives received by them as well as the reimbursement of the advertisement charges. After due process of law, the Original Authority vide impugned order confirmed the demand along with interest and imposed penalty. Aggrieved by such order, the appellant is now before the Tribunal.

2. The Ld. Counsel Shri D. Jaishankar appeared and argued for the appellant. It is submitted that the appellant buys/purchases the car from M/s. Maruti Udyog Ltd., and the same is sold to the local buyers. At the time of purchase of cars the appellant makes full payment to M/s. Maruti Udyog Ltd. and the cars are delivered to the appellant by issuing Central Excise invoice wherein all Central Excise duties and sales tax are paid. In other words, the relationship with M/s. Maruti Udyog Ltd. being of buyer and seller on principal to principal basis, the incentives/discounts received by the appellant for reaching the sale targets cannot be subject to levy of service tax under the category of Business Auxiliary Services. The discounts/incentives are given by the manufacturer only for the purchase of vehicles from them in order to achieve the sales target or prompt payment. Such type of discounts are called as bonus or

incentives and need not be included in the taxable value, as there are no services rendered.

3. The said issue is no more res-integra and has been considered by the Tribunal in the case of *M/s. Rohan Motors Ltd. Vs Commissioner of Central Excise, Deharadun 2021 (45) GSTL 315 (Tri. Delhi)*. Similarly in the case of *BM Autolink Vs CCE., Kutch 2022 (12) TMI 12 CESTAT Ahemadabad,* wherein the assessee was the dealer who purchased the vehicles from the M/s. Maruti Suzuki India Ltd. and subsequently sold the same to the various customers. It was held that the incentive/discount which are in regard to sales transaction cannot be subject to service tax.

4. The other amount which has been subjected to service tax is the reimbursement expenses received towards advertisement charges. The expenses for advertisement which were borne by the appellant was reimbursed by Sundaram finances as well as M/s. Maruti Udyog Pvt. Ltd. The scheme of joint advertisement was adopted in order to reduce the expenses in regard to the advertisement for the sale of cars and loan facility. These expenses were reimbursed by M/s. Maruti Udyog Pvt. Ltd. as well as M/s. Sundaram Finances Ltd. The appellant has not received any consideration and only the expenses were reimbursed. The judgment of the Hon'ble Apex Court in the case of Union of India Vs M/s. Intercontinental Consultants and Technocrats Pvt. Ltd. 2018 (3) TMI 357 (SC) was relied to argue that reimbursable expenses are not subject to levy of service tax prior to 2015. The decision in the case of Electronics Technology Parks Vs CCE and Trivandrum 2021 (7) TMI 1095 was relied to support the above arguments. The Ld. Counsel prayed that the appeal may be allowed.

5. The Ld. AR Ms. Anandalakshmi Ganeshram supported the findings in the impugned order. The decision in the case of Commissioner of Central Excise, Chandigarh Vs Premier Motor Garage 2015 (39) STR 490 (Tri. Delhi) was relied to argued that the demand on the reimbursement expenses for advertisement is proper. She prayed that the appeal may be dismissed.

6. Heard both sides.

7. The first issue is in regard to the demand of service tax on the incentives received by the appellant from the manufacturer for sale of cars. The definition of Business Auxiliary Services under Section 65 (19) of the Act ibid is reproduced as under:

> "***Business Auxiliary Services" means:-*** *any service in relation to –*
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> *(i) Promotion or marketing or sale of goods produced or provided by or belonging to the client; or*
>
> *(ii) Promotion or marketing of service provided by the client; or*
>
> *(iii) Any customer care service provided on behalf of the client; or*
>
> *(iv) Procurement of goods or services which are inputs for the client; or*
>
> *Explanation. – For the removal of doubts, it is hereby declared that for the purposes of this sub-clause," input means all goods or services intended for use by the client.*
>
> *(v) Production or processing of goods for, or on behalf of, the client;*
>
> *(vi) Provision of service on behalf of the client; or*
>
> *(vii) A service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision.*
>
> *and includes services as commission agent, but does not include any activity that amounts to manufacture of excisable goods.*
>
> *Explanation. – For the removal of doubts, it is hereby declare that for the purposes of this clause, ---*
>
> *(a) "commission agent" means any person who acts on behalf of another person and clause sale or purchase*

of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person –

(i) Deals with goods or services or documents of title to such goods or service; or

(ii) Collects payment of sale price of such goods or services; or

(iii) Guarantees for collection or payment for such goods or services; or

(iv) Undertakes any activities relating o such sale or purchase of such goods or services;

(b) "excisable goods" has the meaning assigned to it in clause (d) of section e of the Central Excise Act, 1944;

(c) "manufacture" has the meaning assigned to it in clause (f) of section 2 of the Central Excise Act, 1944."

8. The very same issue was analysed by the Tribunal in the case of M/s. Rohan Motors Ltd. (Supra). The relevant paragraphs read as under:

"2. The appellant is a dealer of Maruti Udhyog Ltd. [MUL]. The appellant buys vehicles from MUL for further sale to the buyers by virtue of a dealership agreement dated January 1, 2013 entered into between Maruti Suzuki India Ltd. and the appellant. Under the said agreement, the appellant receives discount form MUL, which are referred to as "incentives" under the scheme. The Department has sought to levy service tax on the incentives received by the appellant under the category of "business auxiliary service" [BAS].

10. As noticed above, the appellant purchases vehicles form MUL and sells the same to the buyers. It is clear from the agreement that the appellant works on a principal to principal basis and not as an agent of MUL. This is for the reason that the agreement itself provides that the appellant has to undertake certain sales promotion activities as well. The carrying out of such activities by the appellant is for the mutual benefit of the business of the appellant as well as the business of MUL. The amount of incentives received on such account cannot, therefore, be treated as consideration for any service. The incentives received by the appellant cannot, therefore, leviable to service tax.

*12. The Tribunal placed reliance on an earlier decision of the Tribunal in Tyota Lakozy Auto Pvt. Ltd. [**2017 (52) STR 299 (Tri.- Mumbai)**] and observed.*

> *"4. From a perusal of various case laws relied by the appellant, we note that the discounts/incentives received by the appellant form 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.*
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> *5. Revenue has ordered for payment of Service Tax under various receipts recorded under miscellaneous income. These include loading/unloading charges,*

Pollution Checkup 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."

*13. The same view was taken by the Tribunal in Commissioner of Service Tax, Mumbai-I Vs. Sai Service Station Ltd. [**2013 (10) TMI 1155-CESTAT Mumbai]***
14. In regard to the period post July, 2012, reliance has been placed by the learned Counsel for the appellant on an order dated March 23, 2017 passed by the Joint Commissioner, Central Excise in the matter of M/s. Rohan Motors Ltd. The period involved was from October, 2013 to March, 2014 and 2014-15. The Joint Commissioner, after placing reliance upon the decision of the Tribunal in Sai Service Station Ltd., observed as follows:

"I also find that the ratio of the aforesaid case of CCE, Mumbai-I Vs. Sai Service Station is squarely applicable to the facts of the present case and hold that no service tax can be demanded on the incentive which was in form of trade discounts, extended to the party in terms of a declared policy for achieving sales target. Accordingly, I find that the demand of service tax raised on this count is unsustainable. Thus demand of interest under section 75 of the Act is also no sustainable."

15. The department, in the present cannot be permitted to take a different view. The service tax on the amount received form incentives could not, therefore, have been levied to service tax."

9. The Tribunal in the case of BM Autolink Vs Commissioner of Central Excise, Kutch (Supra) has taken similar view and set aside the demand of service tax on the incentives received for sale of cars.

> "*4. We have carefully considered the submissions made by both the sides and perused the records. We find that the fact is not under dispute that 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 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 of value of the vehicle and 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. This issue is no longer res-integra as the same has been decided in various judgments cited by the appellant.*
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> - *ROSHAN MOTORS PVT. LTD-2022 (8) TMI 1254-CESTAT NEW DELHI*
>
> *10. The same view was taken by the Tribunal in* ***CST v. Sai Service Station Ltd. – 2013 (10) TMI 1155-CESTAT Mumbai = 2014 (35) S.T.R. 625 (Tribunal).***
> *11. In regard to the period post July, 2012, reliance has been placed by the Learned Counsel for the appellant on an order dated March 23, 2017 passed by the Joint Commissioner, Central Excise in the matter of M/s. Rohan Motors Ltd. (own matter). The period involved was from October, 2013 to March, 2014 and 2014-15. The Joint Commissioner, after placing reliance upon the decision of the Tribunal in Sai Service Station Ltd. (supra), observed as follows:*
>
> > *" I also find that the ratio of the aforesaid case of CCE. Mumbai-I v. Sai Service Station is squarely applicable to the facts of the present case and hold that no service tax can be demanded on the 'incentive' which was in form of trade discounts, extended to the party in terms of a declared policy for achieving sales target. Accordingly, I find that the demand of service tax raised on this count is unsustainable. Thus demand of interest under section 75 of the Act, is also no sustainable."*

10. Following the above decisions which is squarely applicable to the facts of the case, we hold that the incentives received by the appellant cannot be subject to levy of service tax under the category of Business Auxiliary Services.

11. A further demand has been made under the category of Business Auxiliary Services on the reimbursable expenses received by the appellant from M/s. Maruti Udyog Ltd. and M/s. Sundaram Finance Ltd. As per the annexure to the Show Cause Notice is seen that these are

nothing but reimbursement of expense for advertisement. The Honourable Supreme Court in the case of Intercontinental Technocrats Ltd. (Supra) has held that the reimbursable expenses cannot be subject to levy of service tax. The decision relied by the Ld. AR for the Department has not considered the decision of the Hon'ble Apex Court and hence not applicable.

12. From the above discussions we are of the view that the demand cannot sustain and requires to be set aside which we hereby do. In the result, the impugned order is set aside. The appeal is allowed with consequential reliefs, if any, as per law.

(Order Pronounced in the open court on 05.06.2023)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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