

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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.75190 of 2022

(Arising out of Order-in-Original No.09/Pr.Commr./ST/GHY/2021-22 dated 22.12.2021 passed by Principal Commissioner, CGST & CX, Guwahati.)

M/s. Bimal Auto Agency

(West Block, A.T.Road, Adabari, Jalukbari, Guwahati-781014.)

...Appellant

VERSUS

Commissioner of CGST & CX, Dibrugarh Commissionerate

.....Respondent

(Milan Nagar, Lane 'F', P.O. C.R. Building, Dibrugarh-786003.)

APPEARANCE

Shri Ankit Kanodia, Advocate for the Appellant (s)

Shri J.Chattopadhyay, Authorized Representative for the Respondent (s)

**CORAM: HON'BLE SHRI P.K. CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)**

FINAL ORDER NO. 75815/2023

DATE OF HEARING : 8 June 2023

DATE OF DECISION : 23 June 2023

Per : P.K. CHOUDHARY :

The present appeal has been filed by the Appellant, M/s Bimal Auto Agency having its place of business at AT Road, Adabari, Guwahati – 780414 and is an authorised dealer of Maruti Suzuki India Ltd (MSIL) and engaged in the business of trading (purchase/sale) of Maruti car from MSIL and selling them to the end consumers, as well as other related business, like servicing and maintenance of the vehicles etc. Based on the investigation undertaken by the DGGI wing of the department in to the business operations of the Appellant, it was issued with a Demand cum Show cause notice dated 29.09.2020 alleging non/short payment of service tax on incentives/discounts received from MSIL on various promotional schemes implemented for

promoting the sales of Maruti vehicles. It was also alleged by the department that there was a short declaration of taxable value in the ST-3 return in comparison to the books of accounts for the impugned period. The demand was stated to have been raised by invoking the extended period of limitation under the proviso to Section 73(1) of the said Finance Act, 1994 along with applicable interest under Section 75 of the said Act.

2. The appellant filed its reply to the said show cause notice by submitting that the incentives received are in the nature of discount on trading of goods by the Appellant and the same cannot be stated to be a service to attract service tax. As regards reconciliation, the Appellant had produced reconciliation statement to show the differences. The Ld. Adjudicating authority however confirmed the entire demand of service tax with interest and imposed equivalent penalty vide OIO dated 22.12.2021. Hence the present appeal by the appellant.

3. Heard both sides and perused the appeal records.

The issues to be decided in the present appeal before us are two fold in nature:

- A. Demand of service tax on the basis of difference in ledgers of income and value shown in ST 3 for such services rendered- Rs. 46,22,520/-
- B. Demand of service tax on incentives and other discounts received from MSIL by the Appellant - Rs. 3,86,36,400/-

4. As regards the demand of service tax of Rs. 3,86,36,400/- it is the allegation of the department that the Appellant had received incentives from MSIL as per terms and conditions of the Agreement and since they were acting on principal to principal basis, the Appellant was liable to pay service tax on such incentives received. On the other hand, it is the contention of the Appellant that such incentives are in

the nature of trading income as the same arises out of sales of vehicles made by the Appellant and there is no element of service to attract service tax on the same. The Appellant also submitted that as per Para 35 of the Dealership Agreement between MSIL and the Appellant, it is mandatory for the dealer viz. the Appellant to promote sales of the MSIL vehicles. Further, MSIL also provides various discounts to the Appellant based on their purchases from MSIL, overall performance and customer satisfaction etc. Further, MSIL provides compensation to the Appellant on account of rate difference when a vehicle is sold by the Appellant to a customer at a lower price due to reduction in the recommended sale price of MSIL after the purchase of said vehicle by the Appellant from MSIL. These activities cannot be stated to be any service provided by the Appellant to MSIL. In support of its contention, the Appellant has relied on the following judgments in their written submissions :

- a. Commissioner of service tax Vs. Sai Service Station Ltd., MANU/CM/0341/2013
- b. Roshan Motors Pvt. Ltd. Vs. Commissioner of Central Excise and Customs, Central Goods and Services Tax, Jaipur, MANU/CE/0302/2022
- c. BM Autolink Vs. C.C.E. – Kutch, MANU/CS/0359/2022 (Tri Ahmd)
- d. Anand Motors Agencies Ltd. Vs. Commissioner of Customs, Lucknow, MANU/CN/0007/2022
- e. Veer Prabhu Marketing Ltd. Vs. Commissioner of Central Excise, Jodhpur, MANU/CE/0062/2023
- f. Prem Motors Private Limited Vs. Commissioner, Central Excise & CGST – Jaipur, MANU/CE/0091/2023
- g. Jaipur Jewellery Show Vs. C.C.E. & S.T. Jaipur – I, MANU/CE/0645/2016

5. We find that the issue is no longer res integra and is squarely covered by the judgment of the Tribunal in the case of BM Autolink Vs.

C.C.E. – Kutch, MANU/CS/0359/2022 (Tri Ahmd), wherein the Tribunal had referred to the judgement of Roshan Motors Pvt. Ltd. Vs. Commissioner of Central Excise and Customs, Central Goods and Services Tax, Jaipur as stated supra and held as under :

"4.....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 customs 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. This issue is no longer res-integra as the same has been decided in various judgments cited by the appellant."

That being the position of law, in our view also, the demand of service tax of Rs.3,86,36,400/- cannot survive and we accordingly set aside the same.

6. As regards the demand of service tax on the basis of difference in ledgers of income and value shown in ST 3 for such services rendered, we find that the Appellant has produced a CA certificate being the statutory auditor of the Appellant and the main reason for such difference was because the department has only taken the credit side of income by ignoring the debit entries for reversal etc. and hence the value as per ledger is inflated.

7. It is also submitted by the Appellant that the service tax audit was conducted for the period from April, 2014 to September, 2016 by the Assistant Commissioner (Audit), Guwahati Audit Circle – 2 in January 2017 and such income reconciliation was satisfactorily

explained to the department and thus again issuing a show cause notice for such difference by invoking extended period of limitation cannot be maintained.

8. We agree with the submissions of the Ld. Advocate for the Appellant as since there had been service tax audit conducted prior to the DGGI investigation covering the period under dispute, we are of the considered view that suppression cannot be alleged by the department for income reconciliation of books and ST 3 returns as no such allegation was raised during department audit. Hence we find that extended period of limitation also cannot be invoked to raise any demand.

Thus, we are of the view that the entire demand of service tax has to go and the order of the Ld. Adjudicating authority is set aside. The appeal filed by the Appellant is allowed with consequential relief to the appellant, if any.

(Order pronounced in the open court on 23 June 2023.)

Sd/
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)