



::प्रधानआयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE PRINCIPAL COMMISSIONER (APPEALS), GST & CENTRAL EXCISE

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan
रेस कोर्स रिंग रोड / Race Course Ring Road
राजकोट / Rajkot - 360 001



Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए.डी.द्वारा :-

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|---|--|-----------------------------|------------------|
| क | अपील / फाइल नम्बर / Appeal / File No. | मूल आदेश नं / O.I.O. No. | दिनांक / Date |
| | V2/4 & 5 /GDM/2019 | 11 & 12/GST/AC/2018-19 | 29-10-2018 |

ख अपील आदेश संख्या (Order-In-Appeal No.):

KCH-EXCUS-000-APP-064-TO-065-2019

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|------------------------------------|------------|--|------------|
| आदेश का दिनांक / Date of Order: | 18.06.2019 | जारी करने की तारीख / Date of issue: | 19.06.2019 |
|------------------------------------|------------|--|------------|

श्री कुमार संतोष, प्रधान आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Principal Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,
राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST,
Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellant & Respondent :-

M/s B M Autolink, Plot No.30-35, Sector 10C, Gandhidham.

इस आदेश (अपील) से व्याथत कोई व्यक्ति निम्नलिखित तरिके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

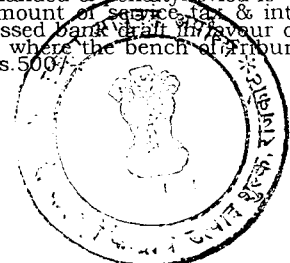
(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रांत अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमानी भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/-, Rs.5000/-, Rs.10,000/- where amount of duty/demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/
The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of the Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs. 500/-



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकती एवं उमकें साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, का अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देन वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टैट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, वशतें कि इस धारा के अंतर्गत जमा कि जान वाली अपेक्षित देय राशि दम करोड़ रूपए में अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल हैं
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- वशतें यह कि इस धारा के प्रावधान विनियम (सं- 2) अधिनियम 2014 के आरंभ में पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार कोपुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामला में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
(iv) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं- 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायोतिधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साथ केंद्र पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। / जहां संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000 -/ का भुगतान किया जाए। / The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण का एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुमूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने में संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in.



:: ORDER-IN-APPEAL ::

M/s. B.M. Auto link, Plot No. 30-35, Sector 10C, Gandhidham – 370201 (hereinafter referred to as 'the appellant') filed following two appeals against Orders-in-Original No. 11 & 12/GST/AC/2018-19 dated 29.10.2018 (hereinafter referred to as 'impugned orders') passed by Assistant Commissioner Central GST, Urban Division, Gandhidham (Kutch) (hereinafter referred to as 'lower adjudicating authority').

| Sr.No. | Appeal No. | SCN No. & Date | OIO No. & Date | Period | Service Tax confirmed (Rs.) |
|--------|---------------|---|---|----------------------------|-----------------------------|
| 1 | V2/4/GDM/2019 | IV/15-98/ST/ADJ/2017 dated 11.4.2017 | 11 & 12/GST/AC/2018-19 dated 29.10.2018 | April, 2015 to March, 2016 | 19,60,300 |
| 2 | V2/5/GDM/2019 | IV/17-20/GIM Urban/ Adj/17-18 dated 12.4.2018 | | April, 2016 to March, 2017 | 41,81,744 |

2. The brief facts of the case are that two periodical SCNs dated 11.4.2017 and dated 12.4.2018 were issued to the appellant demanding service tax of Rs. 19,60,300/- and Rs. 41,81,744/- respectively for FY 2015-16 and 2016-17 respectively under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as "the Act") along with interest under Section 75 of the Act and to impose penalty under Section 76 and under Section 77 of the Act. The lower adjudicating authority vide the impugned orders confirmed demand of service tax as proposed in both SCNs and ordered to recover interest and imposed penalties under Section 76 and Section 77 of the Act.

3. Being aggrieved by the impugned orders, the appellant preferred the present appeals mainly on the grounds as under: -

(i) The appellant entered into Dealership Agreement with M/s. Maruti Suzuki India Limited (hereinafter referred to as "MSIL") and accordingly, the appellant bought cars, vehicles, spare parts, accessories, etc. from MSIL on principal to principal basis; that the

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appellant was required to make advance payment to MSIL before supply of the goods and thereafter, MSIL dispatched goods on payment of Central Sales Tax as well as Central Excise duty which are recovered from the appellant; that with the dispatch of goods from MSIL, the title thereof is passed on to the appellant, who became sole owner of such goods thereafter; that the goods purchased by the appellant are sold by the appellant to their customers again on principal to principal basis on payment of VAT which is recovered from customers under invoices raised by the appellant on customers; that the appellant is bound by the dealership agreement and cannot charge higher price from their customers than the price fixed by MSIL.

(ii) The impugned orders are non-speaking order as the same have not dealt with the submissions and case-laws relied upon by the appellant and therefore, the impugned orders are liable to be quashed/set aside.

(iii) The lower adjudicating authority has failed to appreciate that amount received by the appellant from MSIL was in pursuance to transactions involving sale of vehicles/spares/accessories by the appellant after purchasing them from MSIL. Thus, receipt of income under consideration from MSIL is in commensurate with volume of vehicles purchased by the appellant from MSIL and subsequently sold on his own account and not for any other activity, reason or service, as assumed by the lower adjudicating authority.

(iv) Trading of goods is covered by the negative list of services as provided under Section 66D(e) of the Act and therefore, not exigible to service tax; that it is admitted position that the appellant received amount from MSIL on account of achieving higher volume of trading on their own account and hence, demand of service tax on such receipt from sale-purchase transactions is contrary to Section 66D(e) of the Act and cannot sustain. Section 66B(44) of the Act defines the term "service" which excluded transfer of title of goods





by way of sale. The appellant relied on the following decisions to contend that demand of service tax is not sustainable where dealer sells cars/goods on his own account and receives discount/incentive on account of achieving higher volume, etc.

- Tata Motors Insurance Service Ltd. – 2008 (9) STR 176 (Tri. – Bang.)
- Sai Service Station Ltd. – 2014 (35) STR 625 (Tri. – Mumbai)
- Toyota Lakozy Auto Pvt. Ltd. – 2017 (52) STR 299 (Tri. – Mumbai)
- Jaybharat Automobiles Ltd. – 2016 (41) STR 311 (Tri.)
- Satnam Auto – 2017 (52) STR 303 (Tri. – Del.)

(v) The impugned orders have also confirmed demand of service tax on interest received by the appellant on mandatory deposit amount lying with MSIL, which is not tenable in the eyes of law.

(vi) Since no service tax is payable, demand of interest is also not tenable.

(vii) The appellant has neither charged nor received service tax from MSIL and hence, service tax, if at all required to be paid, must be considered on cum-tax value as held in the case of Advantage Media Consultant reported as 2008 (10) STR 449 (Tri. – Kolkata) affirmed by the Hon'ble Supreme Court reported as 2009 (14) STR J49 (SC).

(viii) It is a settled law that no penalty is imposable in disputes involving interpretation of law and therefore, the appellant is not liable to pay penalty imposed under Section 76 and under Section 77 of the Act.

4. Personal hearing in the matter was attended by Shri Vikas Mehta, Consultant, who reiterated the grounds of both appeals and drawn attention to the case law decided by the Hon'ble CESTAT, Mumbai in the case of Sai Service Station reported as 2014 (35) STR 625 (Tri. – Mum.) along with other case laws referred in Appeal





Memoranda and submitted that this case travelled up to the Hon'ble Supreme Court because assessee filed appeal on issue of penalty on commission received from Banks, FI etc. and not on Business Auxiliary Service and department not filed appeal; that the Hon'ble Supreme Court has decided that appeal as reported in 2017 (7) GSTL J38 (SC) and hence, issue of non-taxability of service tax on business auxiliary service stands decided; that these appeals are exactly on BAS and nothing else of Maruti only; that in view of above legal position, these appeals may be decided accordingly.

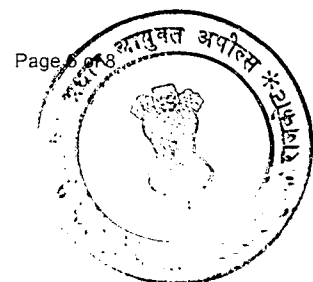
FINDINGS:

5. I find that the appellant has deposited 7.5% of demand of service tax confirmed vide Challans both dated 20.12.2018 as stated by them in Appeal Memoranda and therefore, the appellant has complied with Section 35F (4) of the Act.

6. I have carefully gone through the facts of the case, the impugned orders, the appeal memoranda and submissions made by the appellant including during personal hearing. The issue to be decided in the present cases is as to whether the impugned orders passed by the adjudicating authority confirming demand of service tax on amount received by the appellant from MSIL is correct, legal & proper or not.

7. I find that it is undisputed fact that the appellant was authorized dealer of MSIL and purchased cars, vehicles and accessories of MSIL on principal to principal basis; that MSIL has charged VAT and Central Excise duty at applicable rates from the appellant; that the appellant has sold these goods to their customers under their own invoices on payment of VAT at applicable rate and that MSIL has given discount/incentive to the appellant for achieving the sales target, as per dealership agreement. In view of these facts and circumstances, I find that transactions are clearly of sale of goods on principal to principal basis and no relationship of service provider and service receiver is established between the appellant and MSIL. I also find





that the discount passed on by MSIL is directly concerned with volume of sale and since the transactions are on principal to principal basis, the discount/incentive received by the appellant from MISL cannot be construed as commission income and same is not subject matter of levy of Service Tax in view of negative list of services specified under Section 66D(e) of the Act since this is nothing but trading of goods. Further, amount received by the appellant from MSIL in the form of incentive/trade discount in achieving the targeted sale is not to be considered to be amount received towards performing any service as defined under Section 66B (44) of the Act since discount concerned with sale of goods and ownership of the goods transferred from MSIL to the appellant is at the time of sale of goods to the appellant. Hence, I am of the considered view that amount received by the appellant in the form of incentive/discount from MSIL as per the contractual terms towards achieving the targeted sales of products of MSIL is considered as trade discount and cannot be considered as amount received towards promotion or marketing of goods on behalf of MSIL and therefore, the appellant is not liable to pay service tax on the incentive received by the appellant under the category of "Business Auxiliary Service". Hence, I have no option but to set aside the impugned order confirming demand of service tax including order for recovery of interest and imposition of penalty under Section 76 and Section 77 of the Act.

7.1 My views are supported by the Hon'ble CESTAT, Mumbai in similar case of Sai Service Station reported as 2014 (35) STR 625 (Tri. – Mumbai), wherein it has been held as under: -

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 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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18. In respect of sales/target incentive, the Revenue wants to tax this activity under the category of business auxiliary service. We have gone through the circular issued by MUL which provides certain incentives in respect of cars sold by the assessee-respondent. These incentives are in the form of trade discount. In these circumstances, we find no infirmity in the adjudication order whereby the adjudicating authority dropped the demand. Hence, the appeal filed by the Revenue has no merit.

(Emphasis supplied)

8. In view of above, I set aside the impugned orders and allow the present appeals.

९. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

9. The appeals filed by the appellant stand disposed off in above terms.

[Handwritten Signature]
19/10/19

[Handwritten Signature]
18/10/2019

(कुमार संतोष)
प्रधान आयुक्त (अपील्स)

By Speed Post

To,

M/s. B.M. Auto link,
Plot No. 30-35,
Sector 10C,
Gandhidham – 370201

मेसर्स बी. एम. ऑटो लिंक,
प्लॉट नं. ३०-३५,
सेक्टर १० सी,
गांधीधाम – ३७०२०१

प्रति:

- (1) प्रधान मुख्य आयुक्त, केन्द्रीय वस्तु व सेवा कर, अहमदाबाद क्षेत्र, अहमदाबाद को जानकारी हेतु।
- (2) आयुक्त, केन्द्रीय वस्तु व सेवा कर, गांधीधाम को आवश्यक कार्यवाही हेतु।
- (3) सहायक आयुक्त, केन्द्रीय वस्तु व सेवा कर, अर्बन डिविजन, गांधीधाम, को आवश्यक कार्यवाही हेतु।

✓ (4) गार्ड फ़ाइल

