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|  | :: आयुक्त (अपील) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क :: O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE |  सत्यमेव जयते |
| | द्वितीय तल, जी एस टी भवन / 2 nd Floor, GST Bhavan रस कोर्स रिंग रोड / Race Course Ring Road राजकोट / Rajkot - 360 001 Tele Fax No. 0281 - 2477952/2441142 Email: commrapp13-cexamd@nic.in DIN20230164SX0000222F08 | |

क अपील / फाइल संख्या / मूल आदेश सं / दिनांक / Date
 Appeal / File No. O.I.O. No. 7/8/2021
 V2/EA2/2/BVR/2021 07/SERVICE
 TAX/DEMAND/2021-22

अपील आदेश संख्या (Order-In-Appeal No.):
BHV-EXCUS-000-APP-138-2022

आदेश का दिनांक / जारी करने की तारीख /
 Date of Order: 28.12.2022 Date of issue: 03.01.2023

श्री शिव प्रताप सिंह, आयुक्त (अपील), राजकोट द्वारा पारित /
 Passed by Shri Shiv Pratap Singh, 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 वृत्तित: /

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. Jai Ganesh Auto Corp P. Ltd, Opp. Akhlot Octroi Naka, Nr. Nari Chowkadi, Rajkot Highway, Bhavnagar-364004

इस आदेश (अपील) से व्यभिक्त कोई व्यक्ति निम्नलिखित तरीके 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 प्रति 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) वार्गीकरण मूल्यांकन से सम्बन्धित सभी मामलों में सीमा शुल्क, केन्द्रीय उत्पाद 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 बहाल गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन अमरावा अहमदाबाद- ३८००१६ 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 राशि, ब्याज की राशि और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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 रजिस्ट्रार 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/- रुपये 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/-

(iv) अपील को अपीलकर्ता/प्रतिवादी के द्वारा सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर 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 राशि, ब्याज की राशि और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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 रजिस्ट्रार 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/- रुपये 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/-

(v) 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 उत्पाद शुल्क की राशि, ब्याज की राशि और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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 रजिस्ट्रार 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/- रुपये 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 upto 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- 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 Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-

(vi) अपील को अपीलकर्ता/प्रतिवादी के द्वारा सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर 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 राशि, ब्याज की राशि और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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 रजिस्ट्रार 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/- रुपये 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/-



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाची, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ अद्युक्त, केन्द्रीय उत्पाद शुल्क अध्याय (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणीत होनी चाहिए) और अद्युक्त द्वारा तैयारक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने 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 accompanied by a copy of order 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 (सेट्टल) 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, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि बस करौड़ रुपये से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेननेट जमा की की गई गसत राशि
(iii) सेननेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं-2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचारार्थीन स्थान दर्ज़ा 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, 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 को पुनरीक्षण आवेदन :
Revision Application to Government of India:
इस आवेदन की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम उपसूचक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, 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, जहाँ 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 प्रदूषण 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) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो अट्टी केरीट 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 समायाचिका 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 प्रतियाँ प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आवेदन के संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आवेदन व अपील आवेदन की दो प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साथ-साथ के तौर 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।
यहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 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 आवेदन में कई मूल आवेदों का समावेश है तो प्रत्येक मूल आवेदन के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की निम्न पत्र कार्य है बनाने के लिए यथास्थिति अपीलीय न्यायाधिकरण को 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 Appellate 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 अनुसूची-I के अनुसार मूल आवेदन एवं स्थगन आवेदन की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट 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 बर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की और 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 से 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.



:: अपील आदेश / ORDER-IN-APPEAL ::

~~The present appeal has been filed by the Assistant Commissioner, CGST~~

Division-1, Bhavnagar on behalf of the Commissioner, Central Excise & Central GST Bhavnagar (hereinafter referred to as "Appellant Department") in pursuance of the direction and authorization issued under Section 84 of the Finance Act, 1994 (hereinafter referred to as 'the Act') against the Order-In-Original No. 07/SERVICE TAX/DEMAND/2021-22 dated 08.07.2021 (hereinafter referred to as the 'impugned order') passed by the Assistant Commissioner, CGST Division-1, Bhavnagar, (hereinafter referred to as 'the adjudicating authority') in the case of M/s. Jai Ganesh Auto Corp Pvt. Ltd., Opp.: Akhlol Octroi Naka, Nr. Nari Chowkadi, Rajkot Highway, Bhavnagar-364 004 (hereinafter referred to as 'Respondent').

2. The brief facts of the case are that the Respondent were registered with Service Tax department for various categories of services including "Business Auxiliary Service" having Service Tax Registration No. AACCJ8629FSD001. They are also registered under GST regime having GSTIN No. 24AACCJ8629F1ZK. Based on an intelligence indicating that authorized car dealers were receiving incentives in the form of discounts and reimbursements from car manufacturers but not paying Service Tax thereon, investigation was initiated by the Directorate General, GST Intelligence Regional Unit, Rajkot under summon dated 19.09.2018. The investigation resulted into collection of documents/ records and statement of Shri Kashyap Surendrabhai Vala, Accounting Manager (Indirect Tax) of the respondent was also recorded on 07.03.2019.

2.1 Based on the documents and statement, it was revealed that the Respondent had received various incentives on quantity of purchase/ sales of cars and shown such amount under various sub-heads of income viz. Additional Event Incentive, Desi Services, Team Leader/ Sales Officer Incentive, Team Performance Reward, Price difference, Wholesale Incentive, Marine Claims, Stock Protection Scheme and Incentive on paint material. Such incentives were periodic pay offs to encourage sales by way of promotion and marketing therefore liable to Service Tax. The investigation culminated into Show Cause Notice No. DGGI/RRU/03/2019-20 dated 15.10.2019 wherein Service Tax of Rs. 16,35,156/- under proviso to Section 73(1) of the Act was demanded with interest under Section 75 of the Act. It was also proposed to impose penalties under Section 76, 78 and Section 77 of the Act.

3. The Adjudicating Authority vide impugned order dropped the proceedings initiated vide Show Cause Notice No. DGGI/RRU/03/2019-20 dated 15.10.2019 issued by the Deputy Director, DGGI, Regional Unit, Rajkot.

4. The impugned order was reviewed by the Appellant-Department and present appeal has been filed by Appellant Department on the grounds, *inter-alia*, contending that:-

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(i) The Adjudicating Authority failed to examine the facts of the case and arrived at a conclusion that no service was rendered by the respondent and their activities involved only buy and sale of goods and hence they were not liable to pay Service Tax on the services rendered by them to the manufacturer.

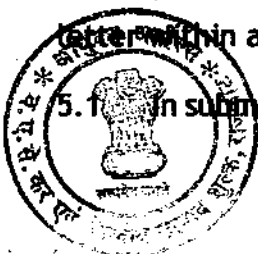
(ii) The Adjudicating Authority has not appreciated the fact that the incentives received under various heads of income as explained in the Show Cause Notice and not under any head related to purchase or sale (trading) of goods. Further, the Adjudicating Authority has not given due weightage to Letter of Intent or Agreement between dealer and manufacturer for necessary verification of claims of authorized person as per the statement.

(iii) The Appellant-Department relied on provisions of Section 65(B) of the Act and stated that any post-sale incentive requiring the dealer to do some act like undertaking special sale drive, organizing event, advertising, seminars etc. would be separate transaction and such incentive or discount or reimbursement would be consideration for undertaking such activities. Such activities fall well within the scope of "service" as defined under Section 65(B) of the Act. Apart from such separate considerations, if any discount is recorded in sales invoice only then such discount would not be required to be accounted for separately as such discount would be adjusted in transaction/purchase value with manufacturer, or adjusted as per agreement between the dealer and manufacturer. Merely accepting that any such transaction is in connection with goods and not service, without weighing terms of relevant agreement is gross error of judgment.

(v) The adjudicating authority erred in adjudicating the Show Cause Notice in favour of the Respondent. The Appellate-Department requested to set aside the impugned order and also requested to direct the Respondent to pay the Service Tax alongwith interest and penalty.

5. Personal hearing in the matter was fixed on 27.12.2022. Shri Jignesh Madhani, Accounts Head and Shri Kashyap Surendrabhai Vala, Accountant appeared for personal hearing on behalf of the respondents and reiterated the submissions made in the reply to the appeal and those in the additional submissions dated 15.12.2022 handed over at the time of personal hearing. They submitted that the respondent is not providing any service to any one and not receiving any incentive, commission or consideration from anyone. They as an authorized dealer of Tata Motors and Toyota Kirsloskar Motors Pvt. Ltd. are merely selling vehicles to the customers and receiving reimbursement from these companies which are passed on to the customers. In the absence of any service, Adjudicating Authority has rightly dropped the Show Cause Notice. They requested to upheld the Order-In-Original and reject the appeal by the department. They undertook to submit authority letter within a week.

5. In submission made at the time of personal hearing the respondent submitted



that under Section 66B of the Act, Service Tax shall be levied on the value of all ~~services other than those specified in the negative list. As per Section 66B(a)~~ trading of goods is a service specified under the negative list and thus, no Service Tax is payable and they relied on the following judgments:

1. 2007 (8) STR 164 (Tri.Bang) Karakkattu Communication Vs. Commissioner of Central Excise, Cochin.
2. 2007 (5) STR 389 (Tri.-Mumbai) Pratap Singh & Sons Vs. Commissioner of Central Excise, Mumbai-I
3. 2008 (12) STR 267 (Tri.Bang.) Vallamattam Communication Vs. Commissioner of Central Excise, Cochin.
4. 2009 (14) STR 379 (Tri.-Chennai) JR Communication Vs. Commissioner of Central Excise, Trichy
5. 2008 (9) STR 176 (Tri.-Bang) Tata Motors Insurance Services Ltd. Vs. Commissioner of Service Tax, Bangalore.

The sum and substance of the transaction has nothing to do in service and as such, any discount or incentive attributable to such trading activity cannot be considered as consideration which is ineligible to Service Tax.

5.2 They demonstrated the sales process from vehicle inquiry to delivery of cars. They further submitted the details of all schemes viz. Additional Event Claim Incentive, Desi Service Incentive, Retails Sales Incentive, Team leader. Sales officer incentives, Team Performance Reward, Price difference, wholesale incenives, marine claims, stock protection scheme and incentive on paint materials. In their financial accounts, figures of various incentive schemes considered as income derived as 'gross receipt as per IT return' and the most of incentives were purely reimbursement of such discount to the authorized dealers by principal manufacturer which had been passed on to the customers by them. They are authorized dealer of M/s. Toyota Kirloskar Motor Pvt. Ltd. and selling cars and all of incentives are not income and hence the liability to pay Service Tax on it does not arise. These discounts need first to be passed on to customer and then they claim the same amount from their parent company. In profit and loss account, the income shown in the name of various incentive schemes is nothing but purely a reimbursement of retain discount claim which they had passed on to their retail customers and thus, levy of Service Tax did not apply.

5.3 During the statement recorded by the DGGI, they have produced all documents related to reimbursement of expenses as well as discounts passed to the customers and they have not collected Service Tax thereon. The Rajkot Central Excise Commissionerate have also excluded the reimbursement of the incentive passed on to the customers and issued Show Cause Notices with net incentive received by the car dealers at the time of Show Cause Notice issued to M/s. Atul



Motors Pvt. Ltd., Rajkot and M/s. Shivalik IB, Rajkot. The authority cannot take assessee wise different view and they rely on the judgment of Intercontinental Consultants and Technocrats Pvt. Ltd. Vs. UOI - 2013 (29) STR 9 (Del.)

5.4 The incentives are not their income but purely reimbursements given by the company towards discounts offered by the company to their customers which were passed to the customers through sales invoices and in some cases it is reimbursement of expenses for advertising, seminars etc. and all are related to trading activity only. They rely on the following judgments:

- (i) CCE, Jaipur Vs. LMJ Services Ltd. - 2017 (3) GSTL 23 (Tri.Del.)
- (ii) Commissioner of Central Excise, Raipur Vs. Ralas Motors 2016-TIOL-46-CESTAT-Delhi.
- (iii) Pillai & Sons Motor Co.- 2009 (14) STR 844 (Tri.-Chennai)
- (iv) Kiran Motors Ltd. - 2009 (16) STR 74 (Tri.-Ahmd.)
- (v) Toyota Lakozy Auto Pvt. Ltd. - 2017 (52) STR 299 (Tri.-Mumbai)
- (vi) Jay bharat Automobiles Ltd. Vs. Commissioner of Service Tax, Mumbai- 2016 (41) STR 311 (Tri.) TS-425-CESTAT-2015-ST.
- (vii) Infinium Motors Pvt. Ltd. Vs. Commissioner of Central Excise, Ahmedabad- 2011 (187) ECR 213 (Tri.-Ahmd.)
- (viii) UOI & Others Vs. Bengal Shracchi Housing Development Ltd. & Anr.
- (ix) UOI & Others Vs. Bombay Tyre International Ltd. & Ors.5.

5.5 The Adjudicating Authority has correctly passed the impugned order dropping the demand which was bad in law as well as on fact that they have not provided any service and amount shown in accounts are related to trading income and hence the appeal is required to be rejected.

6. I have carefully gone through the facts of the case, the impugned order and appeal memorandum of the Appellant-Department, grounds of appeal and submissions dated 14.12.2021, 15/27.12.2021 filed by the Respondent. The issue to be decided in the case is whether the impugned order dropping the service tax demand of Rs. 16,35,156/- in respect of incentive income received by the Respondent from M/s Toyota Kirloskar Motor Pvt. Ltd., (hereinafter referred to as "TKMPL" for sake of brevity) received is correct, legal and proper or not. The period covered in the present appeal is 2014-15 to 2017-18 (up to June, 2017).

7. I find that the Respondent, as a dealer of TKMPL, had received target-based incentives as well as non-target-based incentives. It is the allegation in the Show Cause Notice that such incentives received by the Respondent from TKMPL on the quantity of purchases/ sales of cars is purely commission income under the various names as incentives. It is also alleged that such income received towards various ~~sale promotional schemes of manufacturer whether or not based on quantitative~~ volume of the business is extra incentive for the efforts made by the Respondent for additional purchase/ sales which is related to sales promotion and received against consideration in the form of incentives. I find that the Respondent had received various amounts as incentives under various incentive schemes launched



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by the TKMPL. It is not forthcoming that the incentives received are not related to sales and purchase of cars by the Respondent from the manufacturer. It is also on record that the incentives received by the Respondent were passed on to the ultimate end-use customer as deposed by the Account Manager (Indirect Tax) of the Respondent in his statement dated 07.03.2019 in answer to Question No. 5 and there are no contrary evidences to negate the claim of the Respondent regarding passing out of the incentives to the end-use customer. It is also not forthcoming that the said incentives are not the reimbursement as claimed by the Respondent and as deposed by the Account Manager (Indirect Tax) of the Respondent in his statement dated 07.03.2019.

8. It is the claim of Appellant-Department that the Adjudicating Authority has not given due weightage to Letter of Intent or Agreement between dealer and manufacturer for necessary verification of claims of authorized person as per the statement. On going through the Show Cause Notice, it is evident that there is no discussion or reliance on such Letter of Intent or Agreement between the Respondent and the manufacturer, to establish that such incentives are not related to sale/purchase of cars by the Respondent nor passed on to the end-use customers. The Show Cause Notice relied upon some credit notes, bank statement and some incentive schemes documents only. On this, I find that in the credit notes issued to eligible dealers, manufacturer specifies certain amount of bonus/ discount for specific vehicle which has accrued to dealer models. Observing and implementing such scheme by dealer is as per the obligation stipulated in dealership agreement, and the dealer was required to implement these schemes while selling the vehicles, and in return the dealer received certain pre-fixed discounts/ incentives from manufacturer subject to the verification of claim made by dealer. Discount provided by the manufacturer is related to sales only and has nothing to do with services. It is a fact that the activities between manufacturer and dealer are pure trading services of sale and purchase of vehicles and there is no service element involved therein. Thus, the argument advanced by the Department-Appellant is of no help to them.

9. Another argument of the Appellant-Department is that any post-sale incentive requiring the dealer to do some act like undertaking special sale drive, organizing event, advertising, seminars etc. would be separate transaction and such incentive or discount or reimbursement would be consideration for undertaking such activities. Such activities fall well within the scope of "service" as defined under Section 65(B) of the Act.

9.1 On this, I find that the relationship between the Respondent and the manufacturer is on a principal-to-principal basis. Only because some incentives/ are received by the Respondent under various schemes of the manufacturer cannot lead to the conclusion that the incentive is received for



10. I find that the issue was put to rest by the Hon'ble Tribunal's judgment in the case of M/s. Rohan Motors Ltd (2020-TIOL-1676-CESTAT-DEL). The period covered in the judgment was April-2012 to March-2013 (i.e. pre and post introduction of negative list). For the period prior to July, 2012 (pre-negative list regime), the Hon'ble Tribunal's observations are as under:-

9. The first issue that arises for consideration is whether service tax would be leviable on incentives prior to July, 2012.

10. As noticed above, the appellant purchases vehicles from 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 number of incentives received on such account cannot, therefore, be treated as consideration for any service. The incentives received by the appellant cannot, therefore, be leviable to service tax.

11. In this connection, reference needs to be made to the decision of the Tribunal in Rohan Motors Ltd., which is a case relating to the appellant, but for a period prior to July, 2012. The Tribunal observed as follows:

"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.

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."

12. The Tribunal placed reliance on an earlier decision of the Tribunal in Toyota Lakozy Auto Pvt. Ltd. 2017 (52) STR 299 (Tri.- Mumbai) = 2016-TIOL-3152-CESTAT-MUM and observed.

"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.



Whereas, the Hon'ble Tribunal, for the period post July, 2012 (post-negative list regime), has observed as under: -

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 from incentives could not, therefore, have been levied to service tax.

Thus, the Hon'ble Tribunal vide above judgment has held that service tax cannot be demanded on the incentive received by the vehicle dealer during the pre or post negative list period. I find that the ratio of the above judgment of Hon'ble Tribunals is squarely applicable in the facts and circumstances of the present case. Further, I also find that the then Commissioner (Appeal) vide OIA No. KCH-EXCUS-000-APP-064-to-065-2019 dated 19.06.2019 in the case of M/s. B. M. Autolink involving post-negative list period (April-2015 to March-2017) has decided the matter in favour of the Appellant-assessee involving similar issue. Therefore, the demand dropped by the adjudicating authority is correct.

11. Accordingly, I uphold the impugned order and reject the appeal filed by the Appellant Department.

12. अपीलकर्ता द्वारा वर्क की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

12. The appeal filed by the Appellant is disposed off as above.

सत्यापित / Attested



Superintendent
Central GST (Appeals)

By R.P.A.D. Rajkot .

(शिव प्रताप सिंह)/(Shiv Pratap Singh)

आयुक्त (अपील)/Commissioner (Appeals)

| | |
|--|--|
| To, Assistant Commissioner, CGST, Division-1, Bhavnagar | |
| M/s. Jai Ganesh Auto Corp Pvt. Ltd., Opp.: Akhil Octroi Naka, Nr. Nari Chowkadi, Rajkot Highway, Bhavnagar-364 004 | |

