CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 52943 of 2019

[Arising out of Order-in-Original No. JAI-EXCUS-000-COM-29-19-20 dated17.09.2019 passed by the Principal Commissioner of CGST & Central Excise Commissionerate, Jaipur]

M/s. Vipul Motors Private Limited **...Appellant**
S-10, Shyam Nagar, Ajmer Road,
Jaipur-302019

VERSUS

Principal Commissioner of CGST
& Central Excise, Jaipur - I **...Respondent**
NCR Building, Statue Circle,
C-Scheme, Jaipur,
Rajasthan – 302005

WITH

Service Tax Appeal No. 52944 of 2019

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Suresh Kumar Jain **...Appellant**
DGM (Finance) and Auth. Representative
Of M/s. Vipul Motors Private Limited,
S-10, Shyam Nagar, Ajmer Road,
Jaipur-302019

VERSUS

Principal Commissioner of CGST
& Central Excise, Jaipur - I **...Respondent**
NCR Building, Statue Circle,
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Rajasthan – 302005

APPEARANCE:
Shri Neeraj Gupta, Chartered Accountant for the Appellant
Shri Shashank Yadav, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 10.03.2025
DATE OF DECISION: **02.07.2025**

FINAL ORDER NO. 50957-50958/2025

DR. RACHNA GUPTA

The present order disposes off two appeals arising out of common Order-in-Original bearing Nos. 29-19-20 dated 17.09.2019. One of the appellant is the Proprietor of the another appellant's firm. The facts as are relevant for the present adjudication, succinctly, are as follows: -

1.1 M/s. Vipul Motors Pvt Ltd. being an authorized dealer of M/s Maruti Suzuki India Ltd. (hereinafter also referred as 'MSIL'), is a service provider of maintenance and repairing of Light Motor Vehicles / Passenger Cars etc., and holder of Service Tax Registration for providing Repair, Reconditioning, Restoration, or Decoration or any other similar service, of any motor vehicle, under Business Auxiliary Service and Business Support Service.

1.2 Based on intelligence regarding non-payment of Service Tax by authorized dealers of MSIL in relation to certain payments received as incentives / discounts reimbursements, opining them to be in nature of consideration for Service, an investigation was initiated. Vide letters dated 27.08.2018 and 06.09.2018 month wise details of the amounts of incentives / reimbursements /discounts received by appellants from MSIL during April, 2013 to June, 2017 were called for from the appellants.In response thereto, appellant submitted copies of following:

(i) Cash Back Scheme & RIPS Scheme for FY 2013-14;
(ii) RIPS Others scheme, RIPS Support Scheme & Exchange Offer Scheme for FY 2014-15;
(iii) RIPS scheme, Exchange Bonus Offer Scheme, RIPS Support Scheme for FY 2015-16;

(iv) Consolidated Offer Scheme & Exchange Offer FY 2016-17; and

(v) Consolidated Consumer Offer Scheme for FY 2017-18 (upto June, 2017).

1.3 From perusal of these documents and from the statement of Shri Suresh Kumar Jain, General Manager (Finance) of the appellant and of Shri H. Ramakrishan, the senior Manager (Finance), department observed that M/s VMPL, appellants, have received certain amounts of incentives from MSIL on account of the activities for achievement of specific targets of purchase (Off-Take) as fixed by MSIL by way of Monthly/yearly Cash Back discount and to pass on the specified discounts to the end customers. Documents revealed that M/s VMPL had received incentives / reimbursements / trade discount amounting to Rs.3,63,32,629/-, Rs.5,20,85,178/-, Rs.4,66,81,792/-, Rs.4,88,96,345/- and Rs.21,80,014/- during Financial Year 2013-14 (from Oct., 2013), 2014-15, 2015-16, 2016-17 and 2017-18 (upto June, 2017) respectively. However, Service Tax has not been paid by M/s VMPL, the appellants. On being enquired, the appellants submitted that Service Tax is not leviable on the said amount received by the appellants' company as the same are in the form of incentives, which are linked with Wholesale / Retail targets, and no service whatsoever was rendered by M/s VMPL to MSIL to earn the above mentioned incentives.

1.4 However finding the said submission as incorrect and while invoking the extended period of limitation that a Show Cause Notice (SCN) bearing No. 43/18-19/262 dated 11.04.2019 was served

upon the appellants proposing the demand of Service Tax amounting to Rs.3,00,54,304/- (including cesses) on consideration amounting to Rs.22,05,96,535/- received by them as incentives/discounts reimbursement from MSIL for providing of taxable services during October 2013 to June 2017 in terms of provisions of Section 68 of the Finance Act, 1994 read with Section 66D of the Act, ibid and provisions of Rule 6 of the Service Tax Rules, 1994 alongwith interest and imposed penalties. The proposal was confirmed vide above mentioned Order in Original(O-I-O) dated 17.09.2019. Being aggrieved,appellant is before this Tribunal.

2. We have heard Shri Neeraj Gupta, learned Chartered Accountant for the appellant and Shri Shashank Yadav, learned Authorized Representative for the department.

3. Ld. Counsel for appellant submitted that during the disputed period i.e. from Oct 2013 to June 2017, M/s VMPL had received trade discounts / reimbursement from MSIL. Further, M/s. VMPL had also received target incentives from MSIL on account of sale of vehicles and spare parts. These incentives received by the M/s VMPL did not relate to provision of any services because the M/s VMPL and MSIL are acting on Principal to Principal basis. Otherwise also these incentives are received by the M/s. VMPL as an award for meeting up the business targets set by MSIL. Thus, they are in the nature of target incentives/discount and are not connected to any type of provision of service to MSIL. Further, in the absence of element of "Service", the charging section 66B doesn't apply and therefore such incentives are not chargeable to service tax.

4. Ld. Counsel further submitted that the issue stands already decided by CESTAT, Allahabad in the case of **M/s. Vipul Motors Pvt. Ltd. vs. Commissioner of Customs, Central Excise and Service Tax Noida, Final Order No. ST/A/72161/2008-CU(DB) dated 04.09.2018** wherein it was held that incentives received from MSIL for achieving sale target are not the part of the value of services. It also relied on the Landmark decision of **T.M. Motors Pvt. Vs CGST & CE,Alwar reported as (2018 (7) TMI 1384, CESTAT New Delhi).** It is also submitted that once there was no service tax liability, question does not arises for demanding interest nor for imposition of penalty upon the proprietor of M/s VMPL.

5. Reliance has also been placed on the following decisions of the Tribunal :

a) **Jaybharat Automobiles Limited vs. Commissioner of Service Tax, Mumbai [2015-TIOL-1570-CESTAT-MUM=2016 (41) S.T.R. 311 (Tri.)]**
b) **Sai Service Station Limited vs. Commissioner of Service Tax, Mumbai [2013-TIOL-1436-CESTAT-MUM=2014 (35) S.T.R. 625 (Tri.)]**
c) **Tradex Polymers Private Ltd. vs Commissioner of Service Tax, Ahmedabad [2014 (34) STR 416 (Tri. – Ahmd.)]**
d) **Garrisson Polysacks Private Ltd. vs. Commissioner of Service Tax, Vadodara [2015 (39) STR 487 (Tri. – Ahmd)**
e) **Rohan Motors Private Limited v/s C.C.E. Meerut (Tri – New Delhi) Service Tax Appeal No. ST/58152 / 2013 CU [DB] Final order No. 52355-52356/2018**

With these submissions, the Chartered Accountant appearing for the appellants has prayed for order (O-I-O) under challenge to be set aside and for both the appeals to be allowed.

6. While rebutting these submissions, Ld. AR appearing for the department has fairly conceded that the issue involved herein is no more *res integra.* The decision relied upon by the appellant are acknowledged. However, Ld. AR has reiterated the findings in order-in-original and has prayed for the disposal of both the appeals.

7. Having heard both the parties, we hold as follows: -

7.1 The issue involved in the present appeal is about service tax demand from the authorized dealers of the vehicle manufacture, on the incentives / discounts received by the dealer from such manufactures, which is Maruti Suzuki India Ltd. in the present case. The amount of the incentives / discounts received by the appellants during the period from, October 2013 to June 2017 amounting to Rs. 22,05,96,535/- has been alleged as taxable under Business Auxiliary Service (BAS) being sales promotion activities for M/s Maruti Suzuki Ltd. However, it has fairly been conceded that the said issue stands already decided in the case of Rohan Motors Ltd(Supra). The tribunal in this case, concluded that the incentives / discounts received by the appellants / dealers of car manufacturer were not taxable under BAS, as they were the part of a business transaction on a principle to principle basis.

7.2 In another decision titled as **Commissioner of Service Tax, Mumbai Versus M/s. Jaybharat Automobiles Ltd. and vice-**

versa 2016 (41) S.T.R. 311 (Tri. – Mumbai) it was held that incentives received by the car dealers on principal to principal basis are not chargeable to service tax. Relevant para of the said decision are as under:

> ***"6.5.*** *On the appeal by Revenue on the issue of incentives received by the appellant from the car dealer, we observe 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 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 manufactures 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/incentives to the dealers. The issue is settled in the case of Sai Service Station (Supra). Therefore, we reject the appeal of the department."*

7.3 In yet another decision titles as **My Car Pvt. Ltd. V. CCE, Kanpur reported as 2015 (40) S.T.R. 1018 (Tri. – Del)** this Tribunal has remanded the matter back to the adjudicating authority while deciding that incentives and trade discounts provided by Maruti Udyog Limited (MUL) for fulfilling the targets given by them and for free services done by authorized dealers are out of the ambit of service tax regime. Paragraphs reflecting the stated facts are quoted as under:

> *"Heard both sides and perused the case records. Appellant has mainly argued on the parameters that various incentives given by MUL, on which service tax demand is proposed to be raised under BAS, are of the nature of trade discounts based on performance or are simply certain reimbursements made by MUL for Sales/Joint benefit, which cannot be considered as provision of Business Auxiliary Services. Various activities/incentives involved in these proceedings are deliberated as follows: -*
>
> *(i)….*

(ii)….

(iii) Free Services Charges. It is the case of the appellant that no separate charges are claimed from MUL for providing free services and the expenses for providing free services are met from dealers margin. Appellant relied upon the case law of ***CCE, Indore vs. Jabalpur Motors Ltd. [2014 (36) S.T.R. 1160 (Tri. Del.)]*** *wherein CESTAT, Delh held as follows in para 4 and 5 : ……*

For incentives on spare parts it is the case of the appellant that these incentives are given to the appellant for achieving certain targets of purchase of spare parts which is purely an activity of buying and selling on which local VAT is paid at the time of sale. Appellant strongly argued that such an incentive is only a trade discount based on performance. Appellant has relied upon the case law Deputy Commissioner of Sales Tax vs. Motor Industries Co. Ernakulam (supra). Similarly appellant is getting incentives on MGA, Incentive on Free MGA, Balance Score Card, Incentive on Wagon R and Alto Cars, Incentive on Esteem and Maruti 800 etc., Incentive of free Credit, Incentive on sale of employees of LIC, SBI and Fetchers Scheme, Misc. Spot Credit and IFC, Finance pay out and National Subvention of MUL, part reimbursement of advertisement and incentive for arranging camps/sales mela and Free Mega Checkup Camps.

It is the case of the appellant that all these amounts received from MUL, are either compensatory payments or in the nature of performance based trade discounts on achieving certain performance targets or is an activity which is mutually beneficial to both the appellant and MUL. It is not the case of the Revenue that MUL continues to remain the owner of the goods dealt by the appellant. All the vehicles/spares are purchased by the appellant and then sold. The incentives given by MUL has to be considered performance based trade discounts and will not be in the nature of BAS commissions. On perusal of the case records and the factual matrix we agree with the arguments of the appellant that payments received on these accounts cannot be held to be classifiable as provision of taxable services of BAS under Section 65 (19) of the Finance Act, 1994."

7.4 Also in the case of **CCE, Kanpur v. M/s Cross Road Auto Pvt. Ltd. 2015 (8) TMI 1247 – CESTAT Allahabad** wherein it was observed that:

"Heard both sides and perused the case records. The issue involved in the present proceedings is whether respondent is liable to pay service tax on free own services provided by the dealers. First Appellate Authority has relied upon the case law of ASL Motors Pvt. Ltd. cs CCE & ST, Patna reported in 2008 (9) S.T.R.

356 (Tri. Kolkata) to hold that no service tax liability is attracted. As per the grounds of appeal filed by the Revenue it is stressed that CBEC Circular requires service tax to be payable on such services if the consideration is received by the dealers from the manufacture. As observed from the case records it has not been brought out by Revenue whether any consideration is received by the dealers from the manufacturer of the buyers of vehicles. In the case of CCE, Indore vs. Jabalpur Motors Ltd. reported in 2014 (36) S.T.R. 1160 (Tri. Del.) CESTAT, Delhi held as follows under similar factual matrix. ……

It is evident from the above definition that the liability to service tax is on account of the said service provided to a customer. The service is provided to the car buyers who are the customers. For the free services, no amount is charged from the customers. As regards the contention that amount towards the free services is reimbursed by Maruti Udyog Ltd., it is seen that Maruti Udyog Ltd. have categorically stated that they do not reimburse any amount towards such free services to the dealers. The respondents have also stated that providing such free services is part of the functions and duties of dealers who entitled to the dealership commission. Also the free services are rendered to the car buyers and not to M/s MUL and the car buyers pay nothing therefore. Seen in this light it is evident that the demand of service tax as per column 5 of the table above is misconceived. Coming to the demand of service tax on the amount received on account of salary of drivers of vans used for providing mobile service to the car owners shown in column 4 of the table, it is evident that the customer in this case is the car owner who is recipient of service. M/s MUL receive no service nor are M/s MUL, the respondents customers. Thus the respondents have not provided the services of authorized service stations to them (i.e. M/s MUL). Accordingly this amount cannot be made liable to service tax under the category of authorized service station service.

In view of the above observations and settled proposition of relied upon case laws, appeal filed by Revenue is dismissed."

7.5 We do not find any reason to differ from the findings in various decisions as discussed above nor any difference is pointed out by the department.Accordingly, we hold that the amount of incentives / discounts received by the appellants during the period of dispute have wrongly been held as consideration for rendering a service called BAS. Service tax demand is therefore held to have been wrongly confirmed by the Adjudicating Authority below. The

adjudicating authority has rather failed to observe the judicial protocol.

7.6 In the light of the entire above discussion, the charging of interest under section 75 of the Finance Act 1994 is also not sustainable when service tax itself is not payable. In such circumstances neither there is non-payment / short payment of service tax nor there is contravention of any provision of service tax act by the appellant. Hence penalty also cannot be imposed upon the appellant firm nor on its proprietor. We draw our support from the decision of Hon'ble supreme Court in the case of **Pratibha Processors versus Union of India (1996) (SC),** the relevant extract of judgement in above said case has been reproduced as under:

> *"In fiscal Statutes, the import of the words – "tax", "interest", "penalty", etc are well known. They are different concepts. Tax is the amount payable as a result of the charging provision. It is a compulsory exaction of money by a public authority for public purposes, the payment of which is enforce by law. Penalty is ordinarily levied for some contumacious conduct or for a deliberate violation of the provisions of the particular statute. Interest is compensatory in character and is imposed on an VMPL who has withheld payment of any tax as when it is due and payable. They levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date". Essentially, it is compensatory and different from penalty – which is penal in character."*

It is clear from above judgement that interest is compensatory in nature and linked to payment of tax. So if there is no short or non payment of tax, interest cannot be levied thereon.

7.7 We also rely upon another decision of Hon'ble Supreme Court in the case of No dishonesty on the part of the VMPL:

In the case of **M/s Hindustan Steel Vs. State of Orissa 1978 (2) ELT J 159 (SC)** it was held that an order imposing penalty for failure to carry out the statutory obligation is the result of quasi-criminal proceedings and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contentious or dishonest or acted in conscious disregard of its obligation.

8. In the light of entire above discussion, it becomes clear that the order of demanding interest and imposition of penalties on both the appellants is also not sustainable. As a result, the order under challenge (O-I-O dated 17.09.2019) is hereby set aside and accordingly both the appeals are hereby allowed.

[Order pronounced in the open court on **02.07.2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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