CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH,
COURT NO. 1

SERVICE TAX APPEAL NO. 53434 OF 2015

[Arising out of the Order-in-Original No. JOD-EXCUS-000-COM-0017-15-16 dated 18/08/2015 passed by Commissioner of Central Excise – Jodhpur, Jaipur (Raj.).]

M/s Veer Prabhu Marketing Ltd., **...Appellant**
C-61, MIA, Basni Phase – II,
Jodhpur (Raj.).

Versus

Commissioner of Central Excise, - Jodhpur, **...Respondent**
NCR Building, Statue Circle,
Jaipur (Raj.).

APPEARANCE:

Shri O.P. Agarwal, Chartered Accountant for the appellant.
Shri Harsh Vardhan, authorized representative for the Department

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50105/2023

DATE OF HEARING : 04.01.2023
DATE OF DECISION: 06.02.2023

P.V. SUBBA RAO

This appeal has been filed by M/s Veer Prabhu Marketing Ltd.[1] to assail the order-in-original dated 19.08.2015 passed by the Commissioner of Central Excise, Jodhpur whereby the appellant"s declaration under the Voluntary Compliance

[1] **appellant**

Encouragement Scheme[2], 2013 was found to be substantially false under section 111 of the Finance Act, 2013 and therefore immunity under section 108 of the Finance Act, 2013 was denied to the appellant. Service tax of Rs. 2,27,13,550/- was ordered to be recovered from the appellant and a demand of Rs. 22,51,975/- was dropped. Penalty was also imposed upon the appellant under section 78 of the Act. Aggrieved, this appeal has been filed by the appellant.

2. The appellant was registered with the Service Tax Department under the categories of Business Auxiliary Services[3], Authorized Service Station Services[4] and Renting of Immovable Property Service[5]. It is the authorized dealer of Tata Motors Ltd.[6] for sale, service and spare parts of medium and heavy commercial vehicles in 5 districts of Rajasthan. The appellant was purchasing such vehicles from Tata on its own account and thereafter selling them to the customers. On sales, the appellant was paying Value Added Tax[7]. According to the appellant, the dealings between Tata and itself were on principal to principal basis. However, if the appellant met specific sales targets various incentives were available to the appellant as per the policy of the Tata.

3. The appellant was also authorized to service vehicles and for servicing the appellant was collecting service charges and cost

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[2] **VCES**
[3] **BAS**
[4] **ASS**
[5] **RMPS**
[6] **Tata**
[7] **VAT**

of spares from its customers. The appellant was also undertaking servicing during the warranty period and for such services, the service charges were paid by Tata along with the cost of spares used in servicing during such Warranty period.

4. The appellant filed a declaration under the VCES to settle tax dues and seek immunities from interest, penalties and other proceedings under the Finance Act, 1994 and declared taxable receipts of Rs. 2,53,92,806/- and paid service tax on this amount of Rs. 17,08,986/-. A show cause notice[8] dated 18.11.2014 was issued to the appellant proposing to reject the declaration under section 111 of the Finance Act, 2013 on the ground that the declaration was substantially false as the actual taxable receipts were Rs. 22,41,50,211/- on which a tax of Rs. 2,49,65,525/- was to be paid. The SCN proposed to recover the unpaid tax along with interest and impose penalties. These proposals were confirmed by the impugned order.

5. Learned Consultant for the appellant submits that of the alleged receipt of Rs. 23,43,19,543/- taxable receipts were only Rs. 2,33,48,828/- on which service tax has already been paid, the breakup of which is as follows:-

Sl. No.	Category of receipt	Value of receipts (Rs.)	Reference of page no. of SCN
01	Services on which, tax already paid	2,33,48,828/-	„D" of back of page no. 100 of appeal (schedule given under D and details of payment) & para 33 of O-I-O and P-104 of appeal.
02	Services of medium and heavy commercial vehicles of Tata, not	3,91,95,353/-	Para (xii) at back side of Page No. 99 of appeal and para 31 at back side of page 102 of appeal under

[8] **SCN**

	taxable		discussion and finding portion.
03	Various incentives received from Tata, non-taxable	17,17,75,363/-	Para (xix) at Page No. 100 of appeal and Para 32 at back side of page 102 onwards of appeal under discussion and finding portion.
	Total	23,43,19,543/-	

6. Of the above, tax had been paid on Sl. No. 1. Tax has been partly dropped, partly paid and partly disputed on Sl. No. 2 above and is fully disputed on Sl. No. 3 above. According to the learned Consultant for the appellant, Sl. No. 03 of the above table refers to various incentives which it received from Tata for meeting certain targets. Therefore, these receipts were not for rendering any service, but were trade discounts, which are not exigible to service tax. Hence, no service tax payable.

7. As far as Sl. No. 02 of the table is concerned, according to learned Consultant no service tax was payable upto 30.06.2012 as only servicing of motor cars, light motor vehicles and two-wheeler motor vehicles were taxable under section 65 (105) (zo) of Finance Act, 1994. From 01.07.2012, servicing of all types of vehicles became taxable. The Commissioner dropped the demand for the period upto 31.03.2012. For the period 01.04.2012 to 30.06.2012 since the break-up of the receipts towards services during warranty and the cost of spares and consumables used during servicing was not available, he confirmed service tax on the entire amount. The appellant has already paid VAT on the cost of spares and, therefore, service tax cannot be charged on this account. Further, according to the learned Consultant the appellant has already paid service tax on the amounts received towards labour under warranty repairs during the period 2012-

2013. Learned Consultant has submitted the following break-up of the receipts during this period :-

"(a)	Warranty receipts of 2012-13 (cost of Spares and Consumables reimbursed By the principals on which VAT paid)	1,09,91,928.00
(b)	Labour receipts Barmer 4/2012 to 6/2012	57,200.00
(c)	Labour receipts Jodhpur 4/2012 to 6/2012	3,03,899.00
(d)	Labour receipts BMR – Bus 4/2012 to 6/2012	19,991.00
(e)	Labour receipts Jodhpur - Bus 4/2012 to 6/2012	16,285.00
(f)	Labour free service 4/2012 to 6/2012	7,92,223.00
(g)	Labour and Misc. Receipts on warranty 4/2012 to 6/2012	3,14,285.00
	Total exempted value	1,24,95,181.00
	Out of 1,76,41,992/- for 2012-13, service tax on exempted value confirmed vide OIO @ 12.36% Liable to be dropped.	**15,44,404.00**

8. According to the learned Consultant it has already paid service tax of receipts of Rs. 2,33,48,828/-, as recorded in paragraph 33 of the impugned order. As far as the servicing of medium and heavy commercial vehicles is concerned, the Commissioner has dropped demand upto 31.03.2012, but has confirmed demand on the entire receipts for the period 01.04.2012 to 30.06.2012, because the break-up of the cost of spares were not available which is now available.

9. As for the last part of the demand on the incentives which the appellant received from M/s Tata Motors for meeting the sales targets, according to the appellant, its dealership agreement with Tata Motors makes it clear that it is an agreement of sale and purchase of vehicles and the appellant and

Tata Motors dealt on principal to principal basis. He draws attention of the Bench to paragraph 3 (a), 3 (e) and 3 (f) of the agreement which explained the subject matter of the agreement and clarified that the appellant cannot be and is not an agent of Tata Motors. These clauses are reproduced below:-

> "3 (a) The Company hereby appoints and the Dealer hereby accepts, subject to the terms and conditions of this Agreement, to be the Company"s "Authorized Dealer" to sell the following commercial/passenger vehicles including their variants [hereinafter referred to as "Vehicles"], spare parts and accessories thereof marketed by the Company [hereinafter referred to as "Spare Parts"] [the expressions "Vehicle" and "Spare Parts" are hereafter collectively referred to as "Product"] and to provide After Sales Services and various Value Added Services to the customers [hereinafter collectively referred to as "Services"].
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> 3 (e) It is expressly agreed and declared that notwithstanding anything herein contained, this Agreement does not constitute any form of agency or principal-agent relationship between the Dealer and the Company. The Dealer and the Company shall deal solely on a principal to principal basis in the manner provided in this Agreement.
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> 3 (f) Nothing contained in this Agreement shall in any way operate by implication or otherwise to constitute the Dealer as an agent of the Company in any respect and for any purpose whatsoever, and it shall be absolutely unauthorized for the Dealer to represent himself as an agent of the Company or to assume or to create any obligation of any kind, expressed or implied, on behalf of the Company or bind the Company in any respect whatsoever in relation to a third party".

10. Learned Consultant submits that identical issue came up before the Tribunal in case of **Rohan Motors Ltd.** versus **Commissioner of Central Excise, Dehradun**[9] and **Commissioner of Service Tax, Mumbai – I** versus **Sai Service Station Ltd.**[10] and in both these cases, the Tribunal held that incentives received by dealers from manufacturers of automobiles for meeting sales targets are in the nature of trade

[9] **2021 (45) G.S.T.L. 315 (Tri. – Del.)**
[10] **2014 (55) S.T.R. 625 (Tri. – Mumbai)**

discounts and are not exigible to service tax. He further submits that for a subsequent period, in their own case, the Assistant Commissioner of CGST Division – A, Jodhpur in order-in-original dated 24.05.2018 dropped the demand on such incentives. Similarly, in order-in-appeal dated 18.01.2019 Commissioner (Appeals), CGST, Jodhpur also dropped the demand. He, therefore, submits that this issue is no longer *res integra* and the demand may be dropped. He prays that the appeal may be allowed and the impugned order may be set aside.

11. Learned Authorized Representative for the Revenue supports the impugned order.

12. We have considered the submissions on both sides and perused the records.

13. The questions which we need to answer are (a) was the appellant liable to pay service tax on various incentives, which it received from Tata as per the dealership agreement; (b) was the appellant was liable to pay service tax on the entire receipts from M/s Tata Motors on account of the warranty services including that of suppliers; (c) consequently was the declaration under VCES substantially false and deserves to be rejected (d) is the penalty under section 78 imposable upon the appellant.

14. Of the three types of receipts the appellant has not disputed and has already paid service tax on Sl. No. 1 of the table in paragraph „5“ above. With respect to Sl. No. 2, the

demand on the warranty receipts part of the demand has already been dropped by the Commissioner in the impugned order. Part of the demand has been confirmed because the appellant was not able to give separately the receipts on account of supplies and consumables and labour receipts. The appellant has now submitted these details before us. There is no dispute regarding the taxability itself with respect to this part of the demand.

15. The third component of the demand on the incentives received by the appellant from Tata Motors for meeting sales targets. It is undisputed that the agreement is titled dealership agreement and that it also clarifies that the appellant has to purchase vehicles from Tata Motors and then sell them. If it meets the targets it gets additional incentives. This in our considered view, is in the form of a trade discount. Trade discount can take many forms, such as, cash discount, quantity discount, year end discount, etc. These incentives are in the form of year end discount. This is an incentive given to encourage the dealer to buy and sell larger number of vehicles. It is not a payment for any service rendered to the manufacturer. In market, buyers who purchase larger quantities of any good often get a better price. The incentives in this case are of this nature. It has already been held by this Tribunal in the case of **Sai Service Station Ltd.** and **Rohan Motors Ltd.**, that such incentives are not exigible to service tax. Paragraph 2,3,14 and 22 of the order of **Rohan Motors Ltd.** are reproduced below:-

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

3. The demand has been confirmed on the following :

(i) The incentive amount received by the appellant under BAS.

(ii) The registration and number plate charges received by the appellant from the customers for registration of the vehicles with the Regional Transport Authority under BAS;

(iii) The miscellaneous income in the nature of penalty on bouncing of cheques and processing charges under BAS; and

(iv) Transportation charges paid by the appellant under "goods transport agency" services.

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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.* (*supra*) The period involved was from October, 2013 to March, 2014 and 2014-15. The Joint Commissioner, after placing reliance upon the decision of the Tribunal in *Sai Service Station Ltd.* (*supra*), observed as follows :

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

……..

22. Thus, for all the reasons stated above, it is not possible to sustain the impugned order dated June 18, 2015 passed by Commissioner. It is, accordingly, set aside and the appeal is allowed".

16. We, therefore, find that the demand on the incentives received by the appellant are not exigible to service tax. In view

of the above, we find that of the Rs. 23,43,19,543/- on which service tax has been demanded, no service tax can be charged on Rs. 17,17,75,363/- and service tax has already been declared and paid on Rs. 2,33,48,828/-. Of the remaining Rs. 3,91,95,353/- part of the demand has already been dropped as the receipts were of prior to 2012. For the period 2012 to 2013 part of the services were rendered between 01.04.2012 to 30.06.2012 which are not taxable, but services post 01.07.2012 were taxable. However, the demand was confirmed for the entire year as the breakup of the receipts between 01.04.2012 to 30.06.2012 and the period from 01.07.2012 to 31.03.2013 were not available. These figures have now been presented before us by the learned Consultant. According to the learned Consultant on the basis of these figures a demand of Rs. 15,44,404/- as service tax deserves to be dropped. As the Commissioner had no opportunity to examine these figures and the relevant documents we find that it is a fit case to be remanded to the Commissioner for verification of these figures.

17. Considering all the above, we do not find that there is any mis-declaration in the VCES declaration made by the appellant. We find that :-

(i) There was no substantial mis-declaration by the appellant in the VCES declaration ;

(ii) Consequently the appellant enjoys the immunity under VCES ;

(iii) The service tax demanded on the incentives received from M/s Tata Motors cannot be sustained and needs to be set aside.

(iv) The amount received for warranty services of medium and heavy commercial vehicles of Tata Motors after 01.07.2012 are taxable to the extent they represent services and not cost of supplies. The receipts for the period 01.04.2012 to 30.06.2012 have to be excluded as it is undisputed that the services were not taxable prior to 01.07.2012. The figures now made available by the learned Consultant may be verified by the Commissioner to determine/re-determine the tax liability ;

(v) The penalty imposed upon the appellant under section 78 cannot be sustained ;

(vi) Any other immunities available under the VCES Scheme are available to the appellant.

18. In view of the above, we allow the appeal by way of remand to the Original Authority for the limited purpose of verifying the receipts for warranty services for the period 01.04.2012 to 30.06.2012 and re-determine the tax liability, if any.

(Order pronounced in open court on 06/02/2023.)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

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