

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 51624 of 2017

(Arising out of Order-in-Appeal No. JOD-EXCUS-000-COM-0012-17-18 dated 20.07.2017 passed by the Commissioner, Central Goods & Services Tax, Commissionerate, 117/5 P.W.D. Colony, Near Ritikya Bheruji Circle, Jodhpur)

M/s Audi Motors Pvt. Ltd.

..... Appellant

VERSUS

Commissioner CGST, Jodhpur Respondent

APPEARANCE:

Shri Vivek Thokalia, Advocate for the Appellant

Dr. Radhe Tallo, Authorized Representative for the Department

**CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

FINAL ORDER NO. 50545/2023

DATE OF HEARING: 21 April, 2023

JUSTICE DILIP GUPTA

The order dated 20.07.2017 passed by the Commissioner confirming the demand of Service Tax with interest and penalty has been assailed by the M/s Audi Motors¹ in this appeal.

2. The sole issue that arises for consideration in this appeal is as to whether the incentives for achieving the sales target can be considered as commission for providing „business auxiliary service“ and, therefore, subjected to levy of service tax.

1. the Appellant

3. This issue has been decided by a Division Bench of this Tribunal in **M/s DD Motors Vs Commissioner of Central Excise, Uttar Pradesh²** and the relevant paragraphs of the decision are as follows:-

" 5. We find that so far as the first issue is concerned, the same is no longer res-integra as it has been decided by several decisions of this Tribunal specially in the appellant's own case in appeal No. 58585 of 2013 under the final order No. 50048 of 2017 dated 03/01/2017. **It has been held that the incentive received by the appellant from M/s Maruti Udyog Ltd. for achieving certain sales target for a month or for a season is in the form of a trade discount and same cannot be considered as a service under the category of the business auxiliary service for the levy of service tax.** The relevant extract of decision is reproduced here below

"5.We have heard both the sides and perused appeal records.

We find the dispute of service tax liability in the present case is only with reference to consideration received by the appellant and reflected in their balance sheet as "commission and incentives". We note that the commission received has been subjected to service tax as affirmed by the learned Counsel for the appellant and same has also been recorded in the show cause notice. Regarding incentive we note that the appellant did submit the communications received from the manufacturer (Maruti Udyog Limited) and also various Circulars issued by them. It is apparent that the appellants are receiving certain monetary incentive when they achieve a predetermined sales target. We note that similar set of facts came up for consideration before the Tribunal and in the decisions cited (supra) it has been held that such target incentive which are more in the nature of trade discounts cannot be subjected to service tax under the category of Business Auxiliary Service. Following the decision of the Tribunal in these cases, we find the impugned order cannot be sustained. Accordingly, the same is set aside. The appeal is allowed".

6. Thus, on the question of whether the service tax is leviable on the amount of the incentive received by the appellant from M/s Maruti Udyog Ltd. for achieving certain sales targets, we hold that same is not taxable under the category of the business auxiliary service as same being in the form of a trade discount received by the appellant from the supplier of vehicles."

4. This decision has been followed by the Tribunal in **Rohan Motors Ltd. Vs. Commissioner of Central Excise, Dehradun³**.

2. Service Tax Appeal No. 58586 of 2013 decided on 06.11.2018

5. Such being the position, it is not possible to sustain the order dated 20.07.2017 passed by the Commissioner. It is, accordingly, set aside and the appeal is allowed.

(Order dictated and pronounced in the Open Court)

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)**

Rekha



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