CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
<u>PRINCIPAL BENCH, COURT NO.III</u>

Service Tax Appeal No.51048 of 2020

[Arising out of Order-in-Appeal No.27/ST/DLH/2020 dated 24.06.2020 passed by the Commissioner(Appeals-I), Central Tax, Central Goods & Service Tax & Central Excise, New Delhi.]

M/s. Capital Cars Pvt.Ltd. **Appellant**
Plot No.1, Patparganj Industrial Complex,
Opposite Mother Dairy,
New Delhi-110092.

Vs.

Commissioner of Central Goods & Service Tax & Central Excise, New Delhi **Respondent**
GST Delhi East, C.R. Building, I.P. Estate,
New Delhi-110002.

WITH

Service Tax Appeal No.51080 of 2020

[Arising out of Order-in-Appeal No.27/ST/DLH/2020 dated 24.06.2020 passed by the Commissioner(Appeals-I), Central Tax, Central Goods & Service Tax & Central Excise, New Delhi.]

Shri Vipin J. Kapoor
General Manager (Accounts) **Appellant**
M/s. Capital Cars Pvt.Ltd.
Plot No.1, Patparganj Industrial Complex,
Opposite Mother Dairy,
New Delhi-110092.

Vs.

Commissioner of Central Goods & Service Tax & Central Excise, New Delhi **Respondent**
GST Delhi East, C.R. Building, I.P. Estate,
New Delhi-110002.

Appearance:
Present for the Appellant : Shri Sameer Sood & Shri Jatin Mandovaria, Advocates
Present for the Respondent: Shri Anand Narayan, Authorized Representative

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO. 59874-59875 /2024

Date of Hearing : 12.11.2024
Date of Decision: 12.12.2024

RAJEEV TANDON :

M/s. Capital Cars Pvt.Ltd. and Shri Vipin J. Kapoor, General Manager (Accounts) have assailed the impugned Order-in-Appeal No.27/ST/DLH/2020 dated 24.06.2020 and have therefore filed the present appeals.

2. The appellants are aggrieved by the fact that the Ld.Commissioner(Appeals-I), Central Tax, Central Goods & Service Tax & Central Excise, New Delhi has upheld the order passed by the adjudicating authority vide Order-in-Original No.24/PA/ADC/GST/DE/2018-19 dated 31.01.2019, whereby the demand of Service Tax amounting to Rs.51,05,981/- was confirmed against the appellant under section 73(1) of the Finance Act, 1994 along with interest besides imposition of penalty under sections 77, 78 and 78A of the Act *ibid*.

3. The facts of the case are that the appellant is an authorized dealer of M/s. Honda Cars (I) Ltd. (HCIL). The DGCEI during the year initiated certain investigations regarding consumer specific schemes (incentive/discount schemes) floated and implemented by HCIL for the purpose of levy of service tax for the period 01.10.2012 to 30.06.2017. It was observed by the investigating agency that during the aforesaid period the appellant had received monetary considerations for providing services through credit notes and had made adjustments of accounts during the relevant point in time. The credit notes so received by the appellant were credited to their

purchase account and were netted out in the said accounts resulting in reflection of only net portion of such income under the category of "other income" in the balance sheet.

4. Show cause notice dated 27.08.2018 was therefore issued to the appellant and the was adjudicated vide Order-in-Original referred to supra.

5. Shri Sameer Sood, Ld.Advocate submitted that HCIL is engaged in the business of selling of cars. In addition to selling of cars they were also engaged in providing after sale service to the owners of Honda cars sold by them or other dealers of HCIL and carried out repair and maintenance service of four wheelers manufactured by HCIL. It is his case that they were providing 'Business Auxiliary Services' such as facilitating customers to avail insurance services while purchasing cars or provide extended warranty on cars etc. The Ld.Advocate submitted that the appellant had been discharging its service tax liability on the revenue generated on account of repair and maintenance services of the four wheelers as well as commission received from the banks/financial institutions/insurance companies, extended warranty income, repair/service charges etc.

6. The Ld.Advocate representing the appellant further submits that discounts as per schemes introduced by HCIL are offered from time to time that are required to be followed by the appellant and passed on to their customers. This discount is reimbursed by HCIL by way of credit notes credited to their bank accounts. It is informed that participation in such schemes introduced by HCIL is mandatory for the appellants. He submits that the investigations initiated by DGCEI actually culminated into two show cause notices – (1) show

cause notice No.DGCEI/DZU/INV/H/CCIPL/326/2017 dated 01.05.2018 proposing recovery of service tax on incentives received and (2) show cause notice No.DGCRI/DZU/INV/H/CCIPL/326/2017/2017/6190 dated 27.08.2018 proposing to demand service tax on reimbursement of discounts received by the appellant from HCIL, that was passed on to the buyers at the time sale of car in accordance with the scheme introduced by HCIL.

7. That the first show cause notice was dropped by the department as a result of adjudication proceedings, it is the second show cause notice impugned herein. He categorically submits that the lower authorities failed to take cognizance of the law as enunciated on the subject of reimbursement of discount passed on to the buyers. It is his case that the adjudicating authority did not later on give any finding on the submissions that the discounts were relating to sale of goods and not rendition of a service and were an admissible deduction from the sale price and hence could not be subjected to service tax.

8. Countering the argument of the appellant, Shri Anand Narayan, Ld.AR for the department however reiterates the Commissioner(Appeals') findings and emphasizes the fact that the demand pertains to post-negative list regime, that the appellants were promoting and selling cars and other products manufactured by HCIL, achieving targets and in return were granted discounts/incentives offered by HCIL. He however does not dispute the fact that the discount/incentive offered by the manufacturer which were passed on to the buyer, through the appellant, were in

relation to sale and purchase of the said goods and were in accordance with the agreement formulated by HCIL from time to time and the guidelines and marketing strategies required to be adhered to by the dealers for enhancement of sales and other related operations. It is also not disputed that the dealer (appellant) is mandatorily required to comply with and implement HCIL's policies as communicated by the latter from time to time and in accordance with the agreements entered. In sum and substance the Ld.AR contends that the said activities are not covered under the negative list under section 66D of the Finance Act, 1994. As there was no specific exemption thereto, it is his case that the appellants were liable to pay service tax on such incentives, credits received.

9. We have perused the case records and heard the two sides at length in the matter.

10. We note that the appellate authority, while confirming the demand, has not rendered any express findings on the pleas as made out by the appellant, despite noting that the reimbursements made by the manufacturer to the appellant were with regard to "sale and purchase of goods". Relevant paras of the order-in-appeal are reproduced hereinbelow :

> *"5.3 I find that period of demand of service tax involved in the above ase of M/s. Sai Service Station Ltd. [2014 (35) S.T.R. 625 (Tri.Mumbai)] subsequently upheld the Hon'ble Supreme Court is before introduction of negative list regime as introduced w.e.f. 01.07.2012. Post negative list regime, the definition of "Service" was defined under Section 65B(51) of the Service Tax Act, 1994. Under 65B(51) "taxable service" means any service on which service tax is leviable under Section 66B ....*

5.4 The impugned demand pertains to the post negative list regime. I find that the AA has held that the Appellants are promoting and selling the cars and other products of the manufacturer-HCIL achieving targets i.e. wholesale (purchase) and retail (sale) and in return they are getting discounts/incentive from CHIL. The CHIL issues offers/incentives only when the appellants are achieving some targets fixed by the HCIL by following obligatory HCIL policies, procedures, guidelines and operational standards, the consumer schemes such as exchange, corporate, loyalty etc. involving retail support as mutually agreed by the appellant and HCIL ***The recovery of discounts/incentives offered by the manufacturer, passed on to the buyer through the appellant and consequent reimbursement of the same by the manufacturer to the appellant are in relation to sale and purchase of goods****................. These activities of the appellant are not covered in the negative list of services under Section 66D of the Finance Act, 1994 and also no specific exemption notification issued under Service Tax. Therefore, all four elements in term "Service" has been satisfied by the appellant and it may be safely concluded that they are providing service to HCIL in lieu of consideration i.e. incentive which is taxable service in nature as per section 66B(44) and 66B of the Finance Act, 1994.*

11. We also take note of the conclusions drawn by the learned adjudicating authority in an attempt to distinguish this Tribunal's decision, in the appellant's own case. However, we are not quite convinced with the learned adjudicating authority's point of view. For records, the said para from the order-in-original is enumerated below:

5.5 One of the contention of the appellant is that they are engaged in trading of sale of goods, which has been settled in their favour in its own case Hon'ble CESTAT Allahabad final Order No.ST/A/70756/2016-CU dated 30.06.2016 in Appeal No.ST/1606/2011-CU[DB]. It is seen that this case was regarding demand of service tax on value of part and accessories sold during servicing of vehicles. It was held by the Hon'ble Tribunal that value of part and accessories sold during servicing of vehicles when separately shown in the invoices and such value representing sale of goods was *exempted from levy of Service Tax through Notification No.12/2003-ST dated 20.06.2003. The said case thus affords no relief to the Appellant in this impugned issue.*

12. The fact that the appellants are engaged in sales of cars and spares is largely a trading activity pertaining to the sales of goods. In this regard in a related case of the appellant **[2016 (11) TMI – 580 CESTAT]**, while remanding the matter for determination of the issues as stated therein, the Tribunal had the following to state :-

"5. We have taken into consideration the rival contentions. We find that by going by the wording of the said Notification No.12/2003, there is no requirement of payment of VAT to become eligible for exemption in respect of said goods for availing the benefit of Notification No.12/2003. The notification provides that there should be documentary proof indicating the value of the goods sold so as to avail benefit of exemption of such value from the assessable value for arriving at service tax. This crucial aspect was not properly understood by the Original Authority. We, therefore, hold that the requirement of actual payment of VAT is not to be taken into consideration for extending the benefit of said Notification No.12/2003, but it is only to be examined whether documentary proof indicating the value of goods sold, is available on record to extend the said benefit. Further, the Original Authority has not taken into consideration the provisions of Rule 6(3) of Cenvat Credit Rules, 2004, that existed during the material period allowing the Cenvat Credit to appellants. So, we direct Original Authority to re-adjudicate the matter taking into consideration the documentary proof of sale of goods and taking into consideration the provisions of said Rule 6(3) available during the material period. With these directions, we remand the matter back to the Original Authority by setting aside the Order-in-Original. The issue of limitation is kept open to be examined by the Original Authority. The appeal is allowed by way of remand."

[Reference – Capital Cars Pvt.Ltd. vs.CCE, Ghaziabad – 2016 (11) TMI 580-CESTAT Allahabad]

We fail to appreciate the logic to hold that when it was categorically held supra, that there was no liability to Service Tax on activity relating to sale of spare parts for the car, how per se the activity relating to car sales could be taken as one leviable to Service Tax. To us it appears that the said order is passed in utter disregard of the legal position enunciated by this Tribunal.

13. In view of the fact that the appellant is engaged in the sale of goods, it is therefore evident that the aforesaid activities as imputed in the show cause notice are characteristically out of the scope of Chapter V of the Finance Act, 1994. The departmental authorities below have in fact admitted to the said position vide Paras 73, 74, 77 and 80 of the Order-in-Original and para 5.4 of the Order-in-Appeal. It is not disputed that the amount reimbursed by virtue of credit notes actually relates to target incentives and discounts offered by HCIL passed on to the customers through the appellant related to its business of sale of cars, spare parts and accessories and not on account of rendition of any service. It therefore belies logic to include the said activity relating to sale of goods within the ambit of section 66B of the act ibid. We are thus of the view that the provisions of the Finance Act cannot be made applicable to such transactions between the appellant and the HCIL and between the appellant and/or its customers. The discounts and incentives are offered by the manufacturer in relation to sale and purchase of the goods passed on to the ultimate consumers while transferring the possession and ownership of the goods.

14. Drawing analogies, the appellant in support of their contention, drew our attention to this Tribunal’s decision in the case of **J.M.**

Financial Service Private Ltd. vs. Commissioner of Service Tax, Mumbai-I [2014 (36) S.T.R. 151 (Tri.-Mum), wherein the amount received by way of reimbursement of electricity and office expenses was held as not liable to Service Tax, as no service was rendered therein. Relevant paras of the said decision is extracted as under :

> ***"7.1*** *The contention of the appellant is that the amount is received by way of reimbursement of electric charges and office expenses from other group companies. In actual, no service has been rendered to the other group companies. So far receipt of Rs. 2,72,269/- is concerned, the same relates to the receipt on account of infrastructural support provided to the group companies on which liability has been admitted by the appellant. <u>So far electric charges and other expenses are concerned, the same have been received by way of share of the expenses and no service has been rendered, and accordingly, reimbursement of expenses is not leviable to Service Tax</u>. Further, the Revenue has not discharged their onus by establishing that the taxable service has been rendered or any service has been rendered under the category of 'Business Support Services'.*
>
> ***7.2*** *Having considered the rival submissions and contentions, we are of the view <u>that in respect of reimbursement of common expenses in the nature of electricity and other expenses incurred commonly by the appellant, no service can be stated to have been rendered and accordingly, the same not liable to Service Tax</u>."*

[Emphasis supplied]

15. It has been the consistent position of this Tribunal, that sale/target incentive/incentive on sale of vehicles and incentive on sale of spare parts received by assessee, could not be considered as rendering of business auxiliary service.

(i) Sharyu Motors vs. Commissioner of Service Tax, Mumbai [2016 (43) S.T.R. 158 (Tri.-Mumbai)]

(ii) Satnam Auto vs. Commr. of C.Ex., Meerut-I [2017 (52) S.T.R. 303 (Tri.-Delhi)]

(iii) Commr. of S.Tax, Mum-I vs. Sai Service Station Ltd. [2014 (35) S.T.R. 625 (Tri.-Mumbai)]

amongst several others.

15. In view of our discussions supra and the law as settled on the subject, we are of the view that the order impugned herein is not in accordance with law and requires to be set aside. Accordingly, the impugned order is set aside, and the appeals are allowed with consequential relief, if any, as per law.

[Order pronounced on 12th December 2024]

(BINU TAMTA)
MEMBER (JUDICIAL)

(RAJEEV TANDON)
MEMBER (TECHNICAL)

sm