Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 1

Service Tax Appeal No. 10848 of 2020- DB

(Arising out of OIA-CCESA-SRT-APPEAL-PS-099-100-2020-21 Dated 07.10.2020 passed by the Commissioner (Appeals), CGST & Central Excise -Surat-I)

MONARCH CARS PVT LTD **.....Appellant**
Plot No. 409/53, Umiya Nagar,
Chosanath Magdalla Road,
Udhna Surat, Gujarat-394210

VERSUS

COMMISSIONER OF CGST &
CENTRAL EXCISE-SURAT **.....Respondent**
Surat Commissionerate,
New Central Excise Building,
Opp. Gandhi Baug, Chowk Bazaar,
Surat, Gujarat-395001

With

Service Tax Appeal No. 10851 of 2020- DB

(Arising out of OIA-CCESA-SRT-APPEAL-PS-099-100-2020-21 Dated 07.10.2020 passed by the Commissioner (Appeals), CGST & Central Excise -Surat-I)

ANKKET SHAH **.....Appellant**
Plot No. 409/53, Umiya Nagar,
Chosanath Magdalla Road,
Udhna Surat, Gujarat-394210

VERSUS

COMMISSIONER OF CGST &
CENTRAL EXCISE-SURAT **.....Respondent**
Surat Commissionerate,
New Central Excise Building,
Opp. Gandhi Baug, Chowk Bazaar,
Surat, Gujarat-395001

APPEARANCE:
Shri Jigar Shah with Shri Amber Kumrawat, Advocate for the Appellant
Shri N G Makwana, Superintendent (AR) for the Respondent

CORAM:
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 10808-10809/2026

DATE OF HEARING: 29.07.2026
DATE OF DECISION: 04.11.2026

SATENDRA VIKRAM SINGH

M/s Monarch Cars Pvt Ltd, Udhna, Surat (Appellant) are an authorised dealer of M/s Chevrolet Sales India Pvt Ltd. (M/s Chevrolet) and are registered

with service tax department for payment of service tax. The officers of Directorate General of GST Intelligence (DGGI), Surat conducted an investigation against the appellant wherein they found that the appellant was receiving various target based and non-target based incentives/bonus/claim/discounts etc. from M/s Chevrolet against sales related services. As per DGGI officers, these activities are covered as declared service under Section 66(E)(e) of the Finance Act, 1994 and leviable to service tax, but the appellant is not paying any service tax on the said amounts. They recorded the statement of Shri Ankket Shah, General Manager of the appellant firm on 01.08.2019 wherein he explained the basis of receiving the incentive and claims amounts and the various services on which they are discharging the service tax. He admitted to have not paid any service tax on incentives and claims received from OEM and incentive on Spares & Oil. He also produced copy of various sales promotion programmes and stated that the above income pertains to these incentives.

1.1 After analysing various provisions of the Finance Act, 1994, DGGI issued them a show cause notice dated 03.10.2019 proposing demand of service tax of Rs. 92,60,575/- on Incentives and claims amounting to Rs. 663.96 lakhs received by the appellant during the period from 2014-15 to 2017-18 (upto June 2017) under Proviso to Sub-section (1) of Section 73 along with interest under Section 75 and penalty under Section 77 & 78(1) of the Finance Act, 1994. Shri Ankket Shah, General Manager of the appellant firm was also show caused for imposition of penalty under Section 78A of the Finance Act, 1994.

1.2 The above show cause notice was adjudicated by the Joint Commissioner vide order dated 18.03.2020, wherein he, after going through various submissions of the appellants and after analysing various provisions, and the case laws, confirmed the service tax demand of Rs. 92,60,575/- along with interest as proposed in the show cause notice. He imposed an equal amount of penalty on appellant under Section 78, a penalty of Rs. 10,000/-

on them under Section 77 of the Finance Act, 1994 and also, a penalty of Rs. 1 lakh on Shri Ankeet Shah under Section 78A(a) of the Finance Act, 1994.

1.3 Aggrieved with the above order, appellant(s) filed appeal before the learned Commissioner (Appeals) challenging demand of Service tax on merit as well as limitation. He pleaded that the incentives pertain to purchase and sale of cars and are not related to any service. Another ground taken was that while determining service tax liability, cum duty benefit has not paid extended to the appellant. Also, the show cause notice has been issued on the basis of transaction reflected in their specified records, hence, the mandatory penalty under Section 78 should not exceed 50% of the service tax amount. After going through the submissions and records, learned Commissioner (Appeals) held that the Adjudicating authority has correctly determined the service tax liability on the appellant and the said decision need not be interfered. He upheld the order of the lower authority and rejected the appeal filed by the party. He also upheld the penalty on Shri Ankeet Shah, General Manager of the appellant company under Section 78A. Aggrieved with the above order, appellants filed the present appeals before the Tribunal.

2. In their appeal, appellant took the following grounds and prayed to allow their appeal by setting aside the impugned order.

- The income received by them pertains to various incentives which are target based as well as non-target based and therefore, these do not form any consideration for provision of service.
- The demand is time barred as ingredients for invoking extended period of limitation as per proviso to Section 73(1) of the Finance Act, 1994 are absent in their case. They have been regularly audited and no such objection was raised by the departmental audit officers. They enclosed copy of the audit report dated 18.03.2019 for audit of their records for the period April 2015 to June 2017 showing no such para pertaining to the

present issue. The report also indicates that their records were already audited upto March 2015.

- Without prejudice to their main contention that demand is not sustainable, they alternatively pleaded that cum tax benefit should be allowed to them, as the amount received by them should be considered as inclusive of service tax.
- When demand of service tax itself is not tenable, demand of interest under Section 75 and penalty under Section 77 & 78 are attracted. Since, they are not liable to pay service tax on incentives received from M/s Chevrolet, question of showing said income in their ST-3 return does not arise. Likewise, when extended period is not invokable in the present case, they are not liable to any penalty under Section 78. In any case, penalty cannot exceed 50% of the tax amount as the transactions were available in their specified records.

3. Shri Ankket Shah filed a separate appeal against the impugned order of the Commissioner (Appeals) wherein he pleaded that the penalty on him can be imposed only when he is held responsible for an offence relating to evasion of service tax by the main company. As per the detailed submissions made above, the company is not liable to pay any service tax and therefore, he as an employee of the appellant firm, is also not liable to any penalty under Section 78A. He prayed for setting aside the penalty imposed by the lower authorities on him.

4. During arguments, learned Advocate mentions that the issue of leviability of service tax on incentives and claims from OEM and incentive on Spares & Oil received by the appellant company from M/s Chevrolet, are no more res-integra as in a series of decisions, it has been held that the amount received on these counts is related to sale and purchase of cars and therefore, is not liable to any service tax. He referred to the decision of this Tribunal in the case of Comet Car Sales Pvt Ltd reported at 2024 (11) TMI 667 (CESTAT

Ahmedabad) and Shri Ambica Auto Sales & Services reported at 2024(10) TMI 901. He also mentioned that the activities done by the appellant, do not fall under declared services as the amount of consideration is not known at the time of act of purchase and sale of car. The incentives are always calculated subsequent to sale of cars and the same are in the nature of prize money for good performance of a car dealer and cannot be linked with provision of any service. He also relied on the decision of CESTAT in the case of AMR India Ltd Vs. CCE & ST, Hyderabad-II reported at 2016 (42) STR 329 (Tri.) and the decision in the case of CCE, Chandigarh Vs. Fascinate Advertising & Marketing reported at 2013 (31) STR 77.

4.1 Learned Advocate and produced a copy of the audit report conducted of their records for the period April 2015 to June 2017, pleads that the company was regularly audited by the departmental auditors who never raised such an issue. He argued that CESTAT Mumbai in the case of Sanjay Automobiles Engineering Pvt Ltd Vs. Commissioner of Central Excise, Pune II reported at 2016 (17) taxman.com 59 had held that once audit takes place and no objection is taken as to taxability of certain sums received by assessee, then, demand of service tax raised on said sums by invoking extended period is unsustainable. He further submits that there cannot be any suppression when sufficient legal ground is available to show that the appellant had a *bona fide* belief regarding non-levy of service tax. He also relies on the following decisions to support his case:-

(i) Khurana Engineering Ltd. vs. CCE (2011) 21 STR 115 (Tri. -Ahmd.)

(ii)Aditya Birla Nuvo Ltd. vs. CCE (2011) 22 STR 41 (Tri. -Ahmd.)

4.2 Learned Advocate further pleaded that they are neither liable to any interest under Section 75 nor of penalty under Section 77 and 78. For these submissions, he relied on the following decisions:-

(i) Euro Ceramics Ltd. Vs. CCE, Rajkot- 2013 (32) S.T.R. 642 (Tri. - Ahmd.)

(ii) Bharati Tele-Ventures Ltd. Vs. CCE., Pune-III -2014 (33) S.T.R. 86 (Tri. - Mumbai)

(iii) Ess Ess Engineering Vs. CCE., Chandigarh-2010 (20) S.T.R. 669 (Tri. - Del.)

5. Arguing for Shri Ankket Shah, Learned Advocate pleaded that Shri Shah being an employee of the appellant firm has discharged his responsibilities and has not done anything in his personal capacity. He therefore, cannot be faulted for mistakes, if any, committed by the company. He prayed that the penalty imposed on Shri Ankket Shah under Section 78A may be set aside by allowing his appeal. Learned Advocate further placed reliance on the decision of this Tribunal vide Final order No. 10239-10242/2026 dated 02.03.2026 in Down Town Motors Pvt Ltd and Shri Prajesh Manubhai Patel Vs. Commissioner of CGST & Central Excise- Vadodara-I.

6. Arguing for Revenue, learned AR pleaded that the learned Commissioner (Appeals) has clearly held in this case that services have been performed by the appellant firm for which they have received Incentive/Bonus/Discounts from M/s Chevrolet. He pleads that in Negative Tax regime, if a service provider receives any consideration amount for the services rendered by him, which are not covered under negative list, then this consideration amount is liable to service tax. He pleads that as per the agreement between the appellant and M/s Chevrolet, the appellant has undertaken to provide certain services on behalf of the company to the customers and therefore, the amount so received, cannot said to be in relation to sale and purchase of cars. He justified the order of the learned Commissioner (Appeals) and pleaded that not only the company but Shri Ankket Shah, General Manager of the company is also responsible for non-payment of service tax and therefore, penalty imposed on both the appellants may be retained by upholding the order of the learned Commissioner.

7. We have heard both sides. We find that the issue of leviabiltiy of service tax on incentive amounts both on target based and non-target based as in the present case, have been decided in a series of cases. The issue is therefore no more res-integra. This Tribunal in the case of Down Town Motors Pvt Ltd (supra) has held that trade discounts and sales claim reimbursements are not liable to service tax. The relevant para 4 of the said decision is reproduced below:-

"4. We have heard both sides and perused the records.

4.1 As an authorised dealer of HMIL, the appellant is engaged in purchasing cars and spare parts from Hyundai Motors and thereafter, selling to various customers. The incentive schemes / trade discounts can be broadly classified under two categories (a) Reimbursable discounts e.g. Model Discounts / seasonal Discounts / Corporate Discounts, Exchange Discounts which are first passed on to customers and subsequently reimburshed by HMIL after verification by way of credit notes without deducting any TDS. (b) Quantity Discounts or Target Linked Incentives.

4.2 In catena of decisions, it has been held that such kind of discounts are not taxable.

*(a) In **Rohan Motors Limited** reported at 2021 (45) GSTL 315 (Tri-Delhi) the appellant was a dealer of Maruti Udhyog Limited who used to buy vehicles from MUL for further sale to the buyers. Under dealership agreement, the appellant received discount from MUL which was referred to as 'incentives' under relevant schemes. Appellant worked on a principal to principal basis and not as an agent of MUL. Agreement itself provided that appellant had to undertake certain sales promotion activities as well for mutual benefit of business of the appellant and MUL. Incentives received thus, could not be treated as consideration for any service and are not leviable to service tax. Income earned by the appellant from registration charges and number plate charges is not taxable as Business Auxiliary Service. Freight expenses are not taxable under GTA. Amount collected towards cheque bounce charges, not being supply of Service, are not liable to Service Tax.*

*(b) In **Kafila Hospitality & Travels P. Ltd** 2021 (47) G.S.T.L. 140 (Tri. LB), Larger Bench of CESTAT dealt with the issue, 'whether service tax can be levied under the category of "Business Auxiliary Service" on target based incentives paid to the travel agents by the Airlines as they were promoting and marketing the business of the Airlines? The Larger Bench took the view that it is not a case where the air travel agent is promoting the service of the Airlines. Rather by sale of airline tickets he was ensuring the promotion of its own business even though this may lead to incidental promotion of the business of the Airlines. Tribunal also analyzed the scope of the term 'incentives' and found that these are generally given to encourage performance of the party. The relevant para 77 and 78 are reproduced below:-*

"77. Consideration, which is taxable under section 67 of the Finance Act, should be transaction specific. Incentives, on the other hand, are based on general performance of the service provider and are not to be related to any particular transaction of service. It needs to be noted that commission, on the other hand, is dependent on each booking and not on the target. If the air travel

agent does not achieve the predetermined target, incentives will not be paid to the travel agents.

78. In this connection, it will be appropriate to take note of the decision of the Federal Court of Australia A.P. Group. The Federal Court of Australia held that in order to levy tax, the payment must be attributable to a particular supply and not to supplies in general and so the target incentives paid by a motor vehicle manufacturer to a dealer would not qualify as consideration as the incentives would be in relation to all supplies and not in relation to a particular supply. The relevant portion of the decision of the Federal Court is reproduced below:-

53. On analysis, the so-called supplies for consideration identified by the Commissioner are nothing more than the encouragement of an overall business relationship between the manufacturer and the dealer to the mutual benefit of both. The relationship involves a whole raft of obligation from one to the other all, presumably, with the ultimate objective of maximizing their respective commercial positions. As the A.P. Group put it, the overall relationship contemplates a continuing dialogue between wholesaler and retailer in which promises are routinely exchanged, but to characterize this dialogue as involving supply after supply is unrealistic and impractical. To characterize the payment of the incentives intended to encourage the overall relationship to operate efficiently as involving supplies for consideration is equally unpersuasive. A dealer will always wish to sell as many cars as practicable and to move old stock to make way for new stock. So a dealer will always wish its ordering arrangements to be the most efficient and economically beneficial to it. The manufacturer will have the same objectives. It is this context which underpins the Tribunal's conclusion that the payments are not for the supply of anything by the dealer. As the Tribunal said at [86] the dealer (which must be inferred to act in an economically rational manner in the ordinary course) will always want to run the business in this way. The fact that the dealer receives a payment as an incentive when certain thresholds associated with running the business in this way does not mean that the dealer is supplying a service to the manufacturer for consideration. If the incentive payment were not available there is no basis to infer that the dealer would not behave in the same way for free. For these reasons there cannot be said to be any supply for consideration in these arrangements.

(Emphasis supplied)

4.3 As far as target linked incentives are concerned, Hyundai Motors from time to time fixes certain periodic target for purchase of new cars, spare parts, and accessories and if the targets specified by Hyundai Motors are fulfilled, then appellant are entitled to the incentive amounts. Upon some quantity turnover being achieved, the appellant is offered quantity discount by way of credit note. We agree with the learned Counsel for the appellant that these types of incentives are not subject to Service Tax. In plethora of decisions, it has been held that any discount including quantity discount based on minimum quantity procurement, which is known only post facto, is nothing but reduction of purchase price and can never be treated as service. The Revenue is under a mistaken belief that since Hyundai Motors promised to give additional discount in case appellant undertakes specific performances i.e. purchase / sale of more cars from HMIL, this constitutes service for a consideration (in the form of additional discount) and this should suffer Service Tax under Section 65B of Finance Act, 1994. We also agree with the law laid down in Infinium Motors Gujarat Pvt Ltd vs. Commissioner of Service Tax Ahmedabad (2023) 11 Centax 245(Tri. Ahmd) in which this Tribunal has held that incentives being trade / quantity discount against purchase of vehicle by appellant

from the manufacturer, it could not be construed as commission and the same was not leviable to Service Tax.

4.4 We are also of the view that the conclusion arrived at by the learned Principal Commissioner that since the appellant was duty bound, being the authorised dealer of Hyundal Motors to offer such discount to buyers as announced by Hyundai Motors, this amounts to promoting sales of cars of Hyundai Motors and therefore, it should attract Service Tax, cannot be sustained.

4.5 We are also of the view that the conclusion arrived at by the learned Principal Commissioner that since appellant first purchases the cars and hence, ownership gets transferred to them and then the appellant offers discount to own buyers which discount is given back to back by Hyundai Motors to them later on, this is a post activity and hence, cannot be considered to be discount towards purchase of goods from Hyundai Motors but it is separate and distinct from normal purchase and sale of cars, cannot be sustained. We are also of the view that whether such discount is given at the time of sale of car to the appellant or later on, it does not cease to be a discount either way. Such discount is given only when appellant has purchased cars from Hyundai Motors and when such cars are later on sold by the appellant at a discount based on various discount schemes offered by HMIL.

4.6 Revenue has filed two appeals bearing no. ST/10852/2020 & ST/12861/2020 against Shri Prajesh Manubhai Patel and M/s. Down Town Motors Pvt Ltd respectively. Revenue is aggrieved with Order-in-Appeal no. 75-76/2020 dated 14.08.2020 passed by Commissioner (Appeals), CGST & Central Excise Vadodara vide which she had set aside the Order-in-Original dated 17.02.2020 passed by the Joint Commissioner confirming the Service Tax demand of Rs. 1,16,82,969/- on M/s. Down Town Motors Pvt Ltd along with interest and equal penalty under Section 78, a penalty of 10,000/- on the company under Section 77 and a penalty of Rs. 1,00,000/- on Shri Prajesh Manubhai Patel, Accounts Manager of the company. In para 6.2 of the order, learned Commissioner (Appeals) had held as under:-

> *6.2 Here, it would be pertinent to refer to following legal provisions relevant to the issue. As per Section 65(B) (44) which defines "service" as any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-*
>
> *(a) an activity which constitutes merely,-*
>
> > *(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner, or*
> >
> > *(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or*
> >
> > *(iii) a transaction in money or actionable claim;*
>
> *(b) a provision of service by an employee to the employer in the course of or in relation to his employment:*
>
> *(c) fees taken in any Court or tribunal established under any law for the time being in force.*
>
> *Thus, the definition of 'Service', has two parts-*
>
> > *(i) Any activity carried out by a person for another for consideration and*
> >
> > *(ii) Includes a declared service*
>
> *I find that the appellants have contended "That the analogy drawn in the SCN, which was confirmed vide the impugned order based on definition of the term "service" as per Section 65B(44) of the Finance Act, 1994 is also hardly*

sustainable in the facts and circumstances of the present case. Every activity per se does not become service. Purchasing goods is an activity and getting discount for achieving targets is also an activity but it is an activity of purchase and sale of goods and not a service activity"

These contentions of the appellant are sustainable in the eye of law.

6.2.2 Further, the appellant's contention is that their Trade discounts are reimbursements of discounts by Hyundai Motors for passing certain amount of discount. I find their contention, that the said credits received actually results in reduction of the purchase price, is correct. Effectively the same is passed on to the customers as benefits and discounts thereby reducing the overall cost to customers, it is in the nature of reimbursement only.

Further, incentives are the credits received on account of agreed upon targets being achieved i.e. sales and purchase. Therefore, I find that treating trading activity of purchase and sale of products between two principle parties could not be construed as a service. I find that Incentives are in the nature of transaction done as per principal to principal basis and no service element is present in this case.

6.2.3 I find that "Trade Discount" & "Sales Claim Reimbursements are either Target based incentive or Additional incentive received as per schemes on achieving the Target sales or reimbursement of amount from Hyundai Motors in lieu of discount passed on/ given to customers. Hence, these discount income are not covered in definition of "service" and are not chargeable to service tax. Hence, I hold that the demand of service tax in respect of these discounts/ incentives, confirmed in the impugned order is not sustainable. Needless to say that as the demand itself, in respect of these discounts/ incentives is being set aside on merits, interest on the same and imposition of penalties on the appellant No. 1 in respect of these demands are also set aside. As the demand of service tax is being set aside on merits, appellant's contentions on limitation are not being discussed. The contentions raised by the adjudicating authority in this regard are not sustainable, as such discounts cannot be considered as service of "agreeing to the obligation to do an act or agreed to tolerate an act" by any stretch of imagination

4.7 We find that the learned Commissioner (Appeals) has passed impugned order in accordance with the relevant provisions of the Finance Act, 1994 and in line with various judicial pronouncements made by the Tribunal as well as Hon'ble High Courts. We therefore, do not find any reason to interfere with the above findings of the learned Commissioner (Appeals) and accordingly uphold the said order by rejecting the appeal filed by Revenue. As regards Revenue's appeal for penalty on Shri Prajesh Manubhai Patel, we find that when Service Tax demand against the main appellant M/s. Down Town Motors does not sustain as discussed above, there is no reason to impose any penalty on their Accounts Manager Shri Prajesh Manubhai Patel. The learned Commissioner (Appeals) has rightly set aside penalty on him also which order we uphold.

4.8 In view of the above discussions, we have come to the conclusion that the impugned order dated 31.12.2019 passed by the learned Principal Commissioner, Central GST & Central Excise, Vadodara and challenged in Service Tax appeal No. 10406/2020 and ST/10410/2020 is not sustainable and is liable to be set aside whereas, the impugned Order-in-Appeal dated 14.08.2020 passed by learned Commissioner (Appeals) CGST & Central Excise, Vadodara which has been challenged in Appeal No. ST/10852/2020 and ST/10861/2020 by Revenue is liable to be upheld. The Service Tax Appeal No. 10406/2020 and 10410/2020 are liable to be allowed whereas Service Tax Appeal No. 10852/2020 and 10861/2020 are accordingly liable to be dismissed."

7.1 Agreeing with the above finding of the Tribunal, we set aside the impugned order in the case of the appellant and allow their appeal.

7.2 As regards penalty of Rs. 1 lakh on Shri Ankket Shah, General Manager of the appellant firm, we agree that when the main appellant itself is not liable to pay any service tax and the employee cannot be faulted with any violations and contraventions of the provisions of the Finance Act, 1994. Accordingly, we also allow his appeal and set aside the impugned order passed in his case.

8. Both the appeals are allowed.

(Pronounced in the open court on 04.11.2026)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha