CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 85320 of 2021

[Arising out of Order-in-Original No. MUM/CGST/MW/COMMR/AK/01/2020-21 dated 27.11.2020 passed by the Commissioner of CGST, Mumbai West, Mumbai.]

Navnit Motors Private Limited …. **Appellant**
C-Wing, Unit No.101,
1st Floor, Waterford Building,
C.D. Burfiwala Road, Juhu Galli
Andheri (West), Mumbai – 400 058.

Versus

Commissioner of CGST, MUMBAI WEST …. **Respondent**
Mumbai West CGST Commissionerate
Mahavir Jain Vidyalaya
C.D. Burfiwala Road, Juhu Lane
Andheri (West), Mumbai – 400 058.

<u>Appearance:</u>

Ms. Puloma Dalal, Advocate for the Appellant

Shri S.K. Yadav, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86174/2026

Date of Hearing: 04.08.2026
Date of Decision: 22.09.2026

Per: M.M. PARTHIBAN

This appeal has been filed by M/s Navnit Motors Private Limited, Mumbai (herein after, referred to as "the appellant", for short) assailing the Order-in-Original No. MUM/CGST/MW/COMMR/AK/01/2020-21 dated 27.11.2020 (herein after, referred to as "the impugned order") passed by the Commissioner OF CGST, Mumbai West, Mumbai.

2.1 Brief facts of the case, leading to this appeal is summarized herein below:

2.2 The appellant herein is engaged *inter alia*, in the business of authorized dealership for Maruti Suzuki India Limited (MSIL), BMW India

Private Limited, Jaguar Land Rover (JLR) vehicles, among a few others. In this regard, the appellant purchases vehicles from those manufacturers and sell the same to their retail customers. In such activity of sale of vehicles, the appellant acts as trader of Maruti, BMW, JLD brand of vehicles, inn which the dealership agreement between the appellant and the vehicle manufacturers is on principal-to-principal basis. Being a reputed and well established, experienced authorised dealer, the appellant is also providing authorised service center facility for MSIL, BMW and JLR vehicles. For the purpose of payment of service tax on taxable services such as Maintenance and repair services (authorised service station), Business Auxiliary Services (BAS) and Business Support Services (BSS), etc., they are registered with the jurisdictional Service Tax authorities by holding Centralized Registration No. AAACN1252A5T008. With the introduction of GST regime, the appellant has also taken GSTN number duly registering with the State of Maharashtra vide GSTN 27AAACN1252A1Z5.

2.3 On the basis of intelligence developed by the Directorate General of Central Excise Intelligence (DGCEI) that the appellant was receiving incentives and additional discounts from various car manufacturers for providing certain services, on the basis of certain obligations, for which they are not paying applicable service tax, detailed investigation was initiated. Details of the amounts received by the appellant in the form of incentives, bonus, discounts and the other amounts from various car manufacturers during the period 2012-2017 was obtained from the appellant and statements of various persons concerned with such modus operandi were also recorded during the investigation conducted by DGCEI. Such investigation also indicated that the appellant was receiving incentives from car manufacturers in the form of wholesale discount for purchasing specified targeted quantity of spare parts, accessories and for sale of the new cars as well as retail discount of selling specified quantity of cars during a particular month, for fulfilling the targets fixed by car manufacturers as per their incentive schemes. Further they were also receiving certain reimbursement of discounts from car manufacturers, for passing certain amount of discount to their customers, which was fixed by respective car manufacturers. All these income in the form of incentives and reimbursement of discounts were accounted by the appellant in their profit and loss accounts as income. Therefore, DGCEI had concluded that such amounts are liable to be paid with service tax in terms of definition of service under Sections 65B(44), 66E(e), 66B, 67 of the Finance Act, 1994.

2.4 Upon completion of the investigation, the department issued Show Cause Notice (SCN) dated 23.04.2018, proposing for demand of service tax of Rs.17,39,42,899/- for the period 01.07.2012 to 31.03.2017 under Section 73(1) of the Finance Act, 1994 by invoking extended period of time, along with interest; and for imposition of penalties on the appellant under Section 76, 77, & 78 ibid. In adjudication of the aforesaid SCN, learned Commissioner vide impugned order 27.11.2020 had confirmed the entire service tax demand along with interest; and imposed penalty for an amount equal to such service tax under Section 78 ibid and penalty of Rs.10,000/- under Section 77 ibid. Being aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

3. Learned Counsel appearing for the appellants submitted that the very same issue which is disputed in the present appeal, have been examined by various Co-ordinate Benches of the Tribunal in a number of cases and the issue has been decided in their favour in the following cases:

(i) *Sai Service Station Ltd. Vs. Commissioner of Service Tax, Mumbai-I* – 2013-TIOL-1436-CESTAT-MUM

(ii) *Sai Service Private Ltd. Vs. Commissioner of Central Excise & GST, Pune-I* – Final Order No.A/86995-86997/2023 dated 09.10.2023

(iii) *Autobahn Enterprises Private Ltd. Vs. Commissioner of Service Tax, Mumbai-I* - 2022 (56) G.S.T.L. 312 (Tri. – Bom.)

(iv) *My Car Private Limited v. Commissioner of Central Excise, Kanpur* - 2015 (40) S.T.R. 1018 (Tri. – Del.)

(v) *Commissioner of Service Tax, Mumbai Vs. Jaybharat Automobiles Limited* - 2016 (41) S.T.R. 311 (Tri. – Mumbai)

(vi) *Rajasthan Rajya Vidhyut Prasaran Nigam Ltd. Vs. Commissioner of Central Goods & Services Tax and Central Excise, Jodhpur-I* – 2022 - TIOL-134-CESTAT-DEL

Hence, learned Counsel pleaded that the impugned order is not legally sustainable and consequently no penalty is imposable on the appellants.

4. Learned Authorised Representative (AR) for Revenue reiterated the findings in the impugned order.

5. Heard both sides and perused the records of the case. We have also examined the submissions advanced by learned Counsel appearing for the appellant and the learned Authorized Representative of the Department.

6. The issue involved in this appeal is to examine whether the appellants are required to pay the service tax in respect of various incentives, discounts, reimbursement amounts etc., received from various car manufacturers during the disputed period; and whether confirmation of adjudged demands in the impugned order is legally sustainable in terms of the provisions of the Finance Act, 1994.

7. 1 On perusal of the records of the case, we find that in the impugned order the service tax liability has been fastened on the appellants in respect of various incentives, reimbursement of discounts etc. received by them, mainly under Sections 65B(44), 66E(e), 66B, 67 of the Finance Act, 1994 on the ground that these are in the nature of activity of reducing the retail sale price of cars, activity of achieving the target specified for sale of cars and therefore would be covered under the scope of taxable services under the category "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act". In the impugned order, learned Commissioner has given a finding that the contract between vehicle manufacturers and the appellant is in the nature of proposals, there is concurrence or acceptance, obligation cast and carried out for consideration between vehicle manufacturers/ dealers and appellant.

7.2 We find that the above issue of taxability of service tax in relation to performance of certain activity based on contract/agreement has been examined by the Central Board of Indirect Taxes & Customs (CBIC) at length and necessary instructions have been issued to the field formations vide Circular dated 28.02.2023. Accordingly, the field formations were directed to follow the guidelines discussed in the said circular and jurisprudence that has evolved over time, in determining whether service tax is payable in respect of taxable services under the category "Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act". The relevant paragraphs of the said instructions of CBIC are extracted below:

"CIRCULAR NO. 214/1/2023-SERVICE TAX
[F.NO. CBIC-110267/14/2023-CX-VIII SECTION-CBEC], DATED 28-2-2023

An issue has arisen on the levy of service tax on liquidated damages arising out of breach of contract, forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period and similar other issues arising out of clause (e) of section 66E of the Finance Act, 1994. Reference has also been invited to Circular No. 178/10/2022-GST, dated 3rd August, 2022 regarding applicability of

GST on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law, and its applicability to service tax related issues.

2. It may be seen that "Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" is a Declared Service as per clause (e) of section 66E of the Finance Act, 1994. A service conceived in an agreement where one person agrees to an obligation to refrain from an act or to tolerate an act or to do an act, would be a 'declared service' under section 66E, read with section 65B(44) and would be leviable to service tax.

3. The description of the declared service in question, namely, agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act is similar in GST. "Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" has been specifically declared to be a supply of service in para 5 (e) of Schedule II of the CGST Act, 2017.

4. As can be seen, the said expression has three limbs: —
(i) Agreeing to the obligation to refrain from an act,
(ii) Agreeing to the obligation to tolerate an act or a situation,
(iii) Agreeing to the obligation to do an act. Service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act is nothing but a contractual agreement. A contract to do something or to abstain from doing something cannot be said to have taken place unless there are two parties, one of which expressly or impliedly agrees to do or abstain from doing something and the other agrees to pay consideration to the first party for doing or abstaining from such an act. Such contractual arrangement must be an independent arrangement in its own right. There must be a necessary and sufficient nexus between the supply (i.e. agreement to do or to abstain from doing something) and the consideration.

5. The issue also came up in the CESTAT in Appeal No. ST/50080 of 2019 in the case of M/s Dy. GM (Finance) Bharat Heavy Electricals Ltd in which the Hon'ble Tribunal relied on the judgement of divisional bench in case of M/s South Eastern Coal Fields Ltd v. CCE Raipur {2021(55) G.S.T.L 549(Tri-Del)}. Board has decided not to file appeal against the CESTAT order ST/A/50879/2022-CU[DB], dated 20-9-2022 in this case and also against Order A/85713/2022, dated 12-8-2022 in case of M/s Western Coalfields Ltd. Further, Board has decided not to pursue the Civil Appeals filed before the Apex Court in M/s South Eastern Coalfields Ltd. supra (CA No. 2372/2021), M/s Paradip Port Trust (Dy. No. 24419/2022, dated 8-8-2022), and M/s Neyveli Lignite Corporation Ltd. (CA No. 0051-0053/2022) on this ground.

6. In view of above, it is clarified that the activities contemplated under section 66E i.e. when one party agrees to refrain from an act, or to tolerate an act or a situation, or to do an act, are the activities where the agreement specifically refers to such an activity and there is a flow of consideration for this activity. Field formations are advised that while taxability in each case shall depend on facts of the case, the guidelines discussed above and jurisprudence that has evolved over time, may be followed in determining whether service tax on an activity or transaction needs to be levied treating

> *it as service by way of agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act. Contents of Circular No. 178/10/2022-GST, dated 3rd August, 2022, may also be referred to in this regard."*

7.3 From the above instructions of CBIC, it clearly transpires that in the absence of any contractual obligation or flow of consideration for the specific act of doing an act or tolerating an act etc., it cannot be said that such receipt of discounts, incentives etc. could be said to be a service under the category of declared service for the purpose of levy of service tax. This is for the reason, that such receipts are related to sale of cars or service of cars, to which the appellant is working as authorized dealer for sale or authorized service centre for providing maintenance or repair service. Therefore, such activities cannot be treated as 'agreeing to the obligation to do an act' for coverage of taxable service under 'declared service' under Section 66E(e) ibid. Even though the afore said circular was issued subsequent to the impugned order, the same holds good as it has been specifically mentioned that such issue has arisen from the dispute in service tax regime.

8.1 We also find that the dispute pertaining to the issue of service tax liability on discounts/commission offered to car dealers by manufacturer has attained finality in view of the decisions taken by this Tribunal and the Apex Court in a number of cases. In this connection, we refer to the decision of the Tribunal in the case of *Commissioner of Service Tax, Mumbai-I Vs. Sai Service Station Limited* 2014 (35) S.T.R. 625 (Tri.-Mumbai), the relevant portion of the order is extracted below:

> *"14. In respect of the incentive on account of sales/target incentive, incentive on sale of vehicles and incentive on sale of spare parts for promoting and marketing the products of MUL, the contention is that these incentives are in the form of trade discount. The assessee respondent is the authorized dealer of car manufactured by MUL and are getting certain incentives in respect of sale target set out by the manufacturer. These targets are as per the circular issued by MUL. Hence these cannot be treated as business auxiliary service.*
>
> *…*
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> *18. In respect of sales/target incentive, the Revenue wants to tax this activity under the category of business auxiliary service. We have gone through the circular issued by MUL which provides certain incentives in respect of cars sold by the assessee-respondent. These incentives are in the form of trade discount. In these circumstances, we find no infirmity in the adjudication order whereby the adjudicating authority dropped the demand. Hence, the appeal filed by the Revenue has no merit."*

8.2 We further find that this case was appealed before the Hon'ble Supreme Court in Civil Appeal No(s). 690-691 of 2015/[2017 (7) G.S.T.L. J38 (S.C.)] and the Apex Court had ordered for remand of the matter to the Tribunal for afresh consideration only of the issue of penalty on the appellant, as the same has not been considered in spite of rectification of mistake application having been filed.

8.3 Further, in the case of *Commissioner of Service Tax, Mumbai v. Jaybharat Automobiles Limited* [2016 (41) S.T.R. 311 (Tri.-Mumbai)], the Tribunal has held as follows:

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

8.4 We further find that the Tribunal has held in the case of *Autobahn Enterprises Pvt. Ltd.* (supra) that the dispute pertaining to discounts offered to customers have attained finality in favour of the assessee. The relevant paragraphs of the said order are quoted below:

> ***"6.*** *From the decisions cited by Learned Chartered Accountant, we find that the dispute pertaining to discount offered to corporate customers has attained finality. In this connection, the decision of the Tribunal In Re : Toyota Lakozy Auto Pvt. Ltd., which has referred to the other two decisions, observing that :*
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> > *'2. Separate appeals have been preferred against two orders-in-original pertaining to the period from July, 2004 to March, 2007 and from April, 2007 to March, 2011. The demands confirmed in the two appeals are Rs.1,58,69,430/- and Rs.1,57,12,236/-; the impugned order holds appellant liable to tax on commission earned on sale of cars, on facilitation charges collected from customers for registration of vehicles and commission foregone on loans marketed by appellant to customers. It is the contention of the appellant that these are not consideration leviable to tax and that, even if these are, the adjudicating authority has erred in computing the tax liability. As the issues in the two appeals are common, we dispose both by a common order.*
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> > *3. Appellant contends that ` 81,35,813/- and ` 1,21,47,133/- for the two periods has been wrongly subjected to tax because the agreement between the appellant and M/s. Toyota Kirloskar Motor Limited is one of supply of vehicles by the latter on 'principal-to-principal' basis on which*

title and risk, as per Agreement, are passed on to appellant when the vehicles are excise cleared and placed on common carrier. Depending on order quantity, the manufacturer raises invoices after according discounts which are designated as commission/incentive merely as a management terminology. Learned Chartered Accountant for appellant places reliance in the decisions of the Tribunal in Jaybharat Automobiles Limitedv. Commissioner of Service Tax, Mumbai [2015-TIOL-1570-CESTAT-MUM = 2016 (41) S.T.R. 311 (Tri.)], Sai Service Station Limited v. Commissioner of Service Tax, Mumbai [2013-TIOL-1436-CESTAT-MUM = 2014 (35) S.T.R. 625 (Tri.)], Tradex Polymers Private Limited v. Commissioner of Service Tax, Ahmedabad [2014 (34) S.T.R. 416 (Tri. - Ahmd.)] and Garrisson Polysacks Private Ltd. v. Commissioner of Service Tax, Vadodara [2015 (39) S.T.R. 487 (Tri. - Ahmd.)]. In Re : Jaybharat Automobiles Limited, the Tribunal held that :

> *"6.5 On the appeal by Revenue on the issue of incentives received by the appellant from the car dealer, we find 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 of 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 manufacturers 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/institutions to the dealers. The issue is settled in the case of Sai Service Station (supra). Therefore, we reject the appeal of the department."*
>
> *and In re Sai Service Station Limited it was held that*
>
> *"14. In respect of the incentive on account of sales/target incentive, incentive on sale of vehicles and incentive on sale of spare parts for promoting and marketing the products of MUL, the contention is that these incentives are in the form of trade discount. The assessee respondent is the authorized dealer of car manufactured by MUL and are getting certain incentives in respect of sale target set out by the manufacturer. These targets are as per the circular issued by MUL. Hence these cannot be treated as business auxiliary service."*
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> *xx xx xx*
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> *10. To enable a re-visit of the taxability of subvented amounts as well as the abovementioned accounting entries, we deem it appropriate that the matter be remanded to the original authority for deciding afresh on the last two issues. The other two issues are not the subject of this remand as they stand decided in favour of appellant.'*
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> *offers valid precedent.*

7. Accordingly, the demand of Rs.3,70,994/-, along with interest, and penalty under Section 78 of Finance Act, 1994 fails to survive."

9. In view of the settled legal position affirmed by the Hon'ble Supreme Court, we find that the issue arising out of the present dispute is no more *res integra.* Accordingly, we do not find any merits in the impugned order dated 27.11.2020, passed by the learned Commissioner in confirmation of the adjudged demands on the appellant and consequently, we set aside the same.

10. In the result, the impugned order passed by the learned Commissioner is set aside and the appeal filed by the appellants is allowed in their favour.

(Order pronounced in open court on 22.09.2026)

(AJAY SHARMA)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha