IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 70214 of 2023

(Arising out of Order-in-Appeal No.690,691,692/ST/Alld/2023 dated 12.01.2023 passed by the Commissioner of Central Goods & Service Tax and Central Excise (Appeals), 38, M.G. Road, Civil Lines, Allahabad – 211 001)

M/s. Smart Cars Limited **: Appellant**
(Pushp Honda), 9/2, Allen Ganj,
Kanpur – 208 001 (Uttar Pradesh)

VERSUS

Commissioner of C.G.S.T. and Central Excise **: Respondent**
Division-III, Kanpur
117/7, Sarvodaya Nagar,
Kanpur – 208 005 (Uttar Pradesh)

APPEARANCE:

Shri Rajesh Chibber, Advocate, for the Appellant

Shri Santosh Kumar, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 70568 / 2026

DATE OF HEARING: 11.08.2026

DATE OF DECISION: 02.11.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed by M/s. Smart Cars Ltd., 9/2, Allen Ganj, Kanpur – 208 001 (hereinafter referred to as "the appellant" or "SCL"), assailing Order-in-Appeal No. 690,691,692 /ST/Alld/2023 dated 12.01.2023 passed by the Commissioner of C.G.S.T. and Central Excise (Appeals), Allahabad, whereby the demand of Service Tax amounting to Rs.1,18,40,547/- (inclusive of cesses), along with interest and penalties under Sections 77 and 78 of the Finance Act, 1994, came to be confirmed against the appellant-company.

2. The facts of the case are that the appellant is an authorised dealer of M/s. Honda Cars India Limited (hereinafter referred to as "HCIL") and is registered with the Service Tax Department under Service Tax Registration No. AAICS3528EST001. The appellant is engaged in the business of purchase and sale of motor cars. In terms of a signed Dealership Agreement entered into with HCIL, the appellant purchases cars from HCIL and, in turn, sells the same to customers. The dealership arrangement is stated to be on a principal-to-principal basis, and not on a principal-to-agent basis. It is the case of the appellant that the contractual arrangement essentially contemplates sale of cars, spare parts and accessories by HCIL to the dealer and subsequent sale by the appellant/dealer to its customers, without the appellant rendering any service to HCIL in relation to such sale transactions.

3. During the course of investigation, the appellant, vide letters dated 22.10.2018 and 29.05.2019, furnished details relating to the operational support received from HCIL along with a copy of the Dealership Agreement governing the purchase and sale of cars, spare parts and accessories thereof. On scrutiny thereof, the Department noted that the Dealership Agreement furnished by the appellant pertained to the period 2018-19. Thereafter, vide letters dated 09.09.2019, the Department called upon HCIL as well as the appellant to furnish all requisite information and documents concerning discounts and incentives. In response, HCIL, vide letter dated 26.09.2019, furnished, inter alia, documentation relating to the incentive/discount schemes, the Dealership Agreement(s) and ledger accounts pertaining to target-based incentives and

other incentives for the period from April 2014 to June 2017. The Department also issued summons dated 04.10.2019 to the appellant seeking production of relevant records and documents. In response thereto, the Appellant, vide letter dated 11.10.2019, furnished copies of its ST-3 Returns for the period from 2014-15 to 2017-18 (up to June 2017), along with the Dealership Agreement for the period 2018-19.

4. Subsequently, HCIL, vide its letter dated 26.09.2019, also furnished year-wise ledger accounts in respect of discounts, incentives and customer-specified scheme reimbursements extended to M/s. Smart Cars Ltd. (the appellant herein).

5. On the basis of the investigation conducted, it was inferred that during the underlying period, HCIL had extended various performance-based incentives and other forms of financial support to the appellant-dealer, including, inter alia, (i) Wholesale Target Achievement Scheme, (ii) Retail Target Incentive Scheme, and (iii) Accessories Wholesale Target Scheme. In addition to the aforesaid schemes, HCIL also periodically floated consumer-oriented schemes through its dealer network, under which discounts or other benefits were extended by the dealer to the customers on its own account at the time of sale of vehicles, and the corresponding amount, either wholly or partly, was subsequently reimbursed by HCIL to the dealer along with the retail support. It was thus gathered by the investigating officers that the amounts reflected in the accounts of the appellant included not only target-based incentives but also reimbursements pertaining to customer-specific/consumer schemes implemented through the dealer.

6. On the basis of the said ledger accounts, the Department prepared a year-wise quantification of the amounts received by the appellant, which was incorporated as Annexure-A to the Show Cause Cum Demand Notice. The particulars of the amounts received by the appellant from HCIL in terms of the relevant discount/incentive/reimbursement schemes, as arrived at by the Department, are as under: -

Year	Amount (Rs.)
2014-15	26655614
2015-16	36387526
2016-17	16079127
2017-18 (Up to June 2017)	7290013
TOTAL	**8,64,12,281**

7. The Department took the view that the aforesaid incentives, discounts and reimbursements received by the appellant from HCIL were liable to Service Tax. According to the Department, although the mechanism for quantification of the incentive amounts was known in advance, the actual entitlement thereto became ascertainable only upon completion of the relevant period and assessment of the performance achieved by the dealer. It was alleged that, in order to receive or maximise the incentives, the dealer was required to make its "best efforts" in terms of money, personnel and other resources for achieving the prescribed levels of performance, including the targeted combination of wholesale orders and retail sales. The Department accordingly viewed the incentives as arising from fulfilment of contractual obligations undertaken by the dealer and not as discretionary or gratuitous payments.

7.1. In relation to the consumer schemes floated by HCIL, it was alleged that HCIL, while introducing a prospective consumer scheme through its dealer network, simultaneously communicated the extent of retail support available to the dealer; the dealer would extend the prescribed discount to the customer while effecting the sale from its own account and would thereafter claim reimbursement from HCIL, either in full or in part, of the amount so extended. Hence, it was alleged that the dealership arrangement permitted the dealer to charge a price below the maximum selling price fixed by HCIL and that, even where only part of the discount extended to the customer was reimbursed, the dealer continued with the arrangement and derived a benefit therefrom.

8. On the aforesaid basis, it was concluded by the Department that the aforesaid activities undertaken by the appellant in relation to achievement of the prescribed performance parameters and implementation of the consumer schemes constituted an activity undertaken for consideration within the meaning of "service" under Section 65B(44) of the Finance Act, 1994 and, more particularly, amounted to the declared service contemplated under Section 66E(e) thereof, namely, agreeing to the obligation to refrain from an act, to tolerate an act or a situation, or to do an act. It was alleged that the monetary incentives, discounts and reimbursements represented consideration for such activity and were accordingly liable to Service Tax. The Department further proceeded on the basis that the said activity did not fall within the negative list of services and was not otherwise exempt from Service Tax.

9. On the basis of the above allegations, a Show Cause Cum Demand Notice dated 17/18.10.2019 was issued to the appellant, proposing, inter alia, demand of Service Tax amounting to Rs.1,18,40,547/- (inclusive of applicable cesses) for the period from 2014-15 to 2017-18 (up to 30.06.2017) on the amount of Rs.8,64,12,281/- being the incentives/discounts/reimbursements received from HCIL during the underlying period, invoking the proviso to Section 73(1) of the Finance Act, 1994, along with applicable interest and imposition of penalties under the relevant provisions of the Finance Act, 1994.

9.1. The appellant filed a detailed reply to the said Show Cause Cum Demand Notice, contesting the proposed levy and maintaining, inter alia, that it was engaged in the purchase and sale of motor vehicles and that the incentives, discounts and reimbursements received from HCIL were intrinsically connected with the sale transactions and could not be vivisected therefrom so as to constitute consideration for an independent service rendered to HCIL.

10. The matter was thereafter adjudicated by the Additional Commissioner, C.G.S.T. Commissionerate, Kanpur, who passed Order-in-Original No. 37/ADC/ST/2022-23 dated 08.06.2022. By the said order, the ld. adjudicating authority dropped a portion of the proposed demand amounting to Rs.25,88,501/- , holding that the amount of Trade Discounts included in the gross value was not liable to Service Tax, while confirming the balance demand of Rs.92,52,046/- against the appellant, along with applicable interest; the adjudicating authority also inter alia imposed a penalty of Rs.92,52,046/- under Section 78 of the

Finance Act, 1994, besides a further penalty of Rs.10,000/- under Section 77 thereof.

11. Aggrieved by the aforesaid adjudication, both the Revenue and SCL (appellant) preferred appeals before the Ld. Commissioner of C.G.S.T. and Central Excise (Appeals), Allahabad whereby the Revenue challenged the dropping of the demand of Rs.25,88,501/- relating to Trade Discounts, while the appellant assailed the confirmation of the balance demand and the consequential interest and penalties. Thereafter, the Ld. Commissioner (Appeals), vide the impugned Order-in-Appeal No. 690,691,692/ST/Alld/2023 dated 12.01.2023, allowed the appeal preferred by the Revenue and, consequently, set aside the portion of the demand which had been dropped by the adjudicating authority. At the same time, the appeal preferred by the appellant was rejected and the balance demand confirmed by the lower adjudicating authority was upheld. Accordingly, vide the impugned order, the entire Service Tax demand of Rs.1,18,40,547/- against the appellant came to be reinstated. The penalty under Section 78 was correspondingly enhanced to Rs.1,18,40,547/-, while the penalty of Rs.10,000/- under Section 77 remained unchanged. The other penalty imposed under Section 78A upon the Director also remained undisturbed, which however is not the subject matter of the present appeal.

12. It is against the aforesaid Order-in-Appeal, whereby the entire demand of Service Tax along with the consequential interest and penalties stood sustained, that the appellant has filed the present appeal before the Tribunal.

13. The Ld. Counsel appearing on behalf of the appellant, reiterating the grounds of appeal, submitted that the impugned demand proceeds on an erroneous premise that the incentives, discounts and reimbursements received from HCIL constitute consideration for rendition of a service. It was submitted that the appellant is merely engaged in the business of purchase and sale of cars, spare parts and accessories and that no service is rendered by it to HCIL. His submissions may be summarised as under:

(i) It is submitted that no service element involved. HCIL sells cars to the Appellant and the Appellant, in turn, sells the same to its customers on a principal-to-principal basis. The activity is thus one of trading in goods and does not involve rendition of any service by the Appellant to HCIL.

(ii) That Discounts and consumer schemes form part of the sale activity. HCIL circulates policies and monthly bulletins prescribing various customer discount schemes and retail support. The Appellant extends such discounts to the customers while effecting sale of vehicles and, upon verification, the corresponding amounts are reimbursed by HCIL, generally through credit notes. Such reimbursement remains intrinsically connected with the sale of cars and cannot be treated as consideration for an independent service.

(iii) The target-based incentives and other amounts received from HCIL are linked to the Appellant's performance in the course of its business of sale of cars, spare parts and accessories. Mere linkage of an incentive with sales or

achievement of a target does not transform the underlying trading activity into a taxable service.

(iv) That no independent activity has been undertaken for HCIL. The amount alleged to constitute consideration is not received for performing any identifiable taxable service for HCIL, but arises in the ordinary course of the Appellant's business of purchasing and selling vehicles, spares and accessories. The incentives/reimbursements cannot, therefore, be vivisected from the underlying sale transactions and subjected to Service Tax.

(v) The transactions in question are transactions of sale of goods and have already suffered VAT. Since the levy of Service Tax and the levy applicable to sale of goods operate in mutually exclusive fields, the same trading activity cannot be subjected to Service Tax by treating the associated discounts or incentives as consideration for a declared service.

(vi) The demand has been arrived at substantially on the basis of the aggregate figures appearing on the debit side of the ledgers furnished by HCIL, without properly determining the nature and character of the individual amounts comprising such figures, including discounts, incentives and customer-scheme reimbursements. The demand is therefore not sustainable merely on the basis of such aggregate ledger entries.

(vii) In support of their contentions, reliance has inter alia been placed on the following: -

- *Kafila Hospitality & Travels Ltd. v. Commissioner of S.Tax, Delhi [2021 (47) G.S.T.L. 140 (Tri. – LB)]*
- *Southern Motors v. State of Karnataka [2017 (358) E.L.T. 003 (S.C.)]*
- *Capital Cars Pvt. Ltd. [Final Order No. ST/A/70756/2016-CU dated 30.08.2016 in Appeal No. ST/1606/2011-CU(DB)]*
- *Maya Appliances (P) Ltd. v. Addl. Commissioner of Commercial taxes [2018 (10) G.S.T.L. 6 (S.C.)]*

(viii) Without prejudice to the above submissions on merits, it was contended that the ingredients necessary for invocation of the extended period of limitation were not present. The appellant had maintained its statutory records and filed its ST-3 Returns, and there was no suppression of facts or wilful misstatement with intent to evade payment of Service Tax. The demand beyond the normal period was, therefore, contended to be barred by limitation.

13.1. On the basis of these submissions, the Ld. Counsel for the appellant prayed for setting aside the entire demand of Service Tax, along with interest and penalties, as confirmed against them vide the impugned order and thus for allowing the instant appeal, with consequential reliefs.

14. The Ld. Authorised Representative for the Revenue appearing before us reiterated the findings recorded in the impugned order and submitted that the incentives, discounts and reimbursements received by the appellant from HCIL were not merely incidental to the sale transactions, but were linked to fulfilment of specified performance parameters and obligations undertaken by the appellant under the dealership arrangement. It was contended that the

appellant, by making efforts to achieve the prescribed sales/retail targets and by extending the customer-specific discounts and schemes in terms of HCIL's policies, was undertaking activities for HCIL against monetary consideration; that such activities fall within the ambit of the declared service contemplated under Section 66E(e) of the Finance Act, 1994 and were accordingly liable to Service Tax. He thus contends that the appeal filed deserves no merit.

15. Heard both the sides and perused the documents placed on record.

16. Having considered the submissions made by the parties, we find that the dispute lies in determining the true character of the amounts received by the appellant from HCIL by way of various incentives, discounts and reimbursements. While the Department has sought to treat such amounts as consideration for an activity undertaken by the appellant in terms of the dealership arrangement and, consequently, as consideration for the declared service contemplated under Section 66E(e) of the Finance Act, 1994, the appellant maintains that the amounts arise entirely in the course of its business of purchase and sale of motor cars, spare parts and accessories and do not represent consideration for any service rendered to HCIL. The question, therefore, is not merely whether the amounts were linked to the appellant's commercial performance, but whether the activity to which such amounts relate can, in law, be regarded as a service as distinct from the underlying sale/trading activity.

17. On examination of the nature of the dealership arrangement, we find considerable force in the submission of the appellant that the foundational

transaction between HCIL and the Appellant is one of sale and purchase of goods. The appellant purchases vehicles from HCIL and thereafter sells the vehicles to its customers. The arrangement is evidently on a principal-to-principal basis. Thus, upon purchase of the vehicles from HCIL against the relevant commercial documents, the Appellant deals with the vehicles as part of its own trading inventory and the subsequent sale thereof to its customers is a transaction undertaken by the appellant in its own capacity as a dealer. There is, therefore, a material distinction between a dealer purchasing and thereafter selling goods on its own account and an agent rendering a service to its principal for consideration.

17.1. This distinction assumes significance in the context of the statutory definition itself. Section 65B(44) of the Finance Act, 1994, while defining "service", expressly excludes, inter alia, an activity which constitutes merely a transfer of title in goods by way of sale. The statutory scheme thus recognises a clear distinction between a transaction of sale of goods and an activity undertaken for another for consideration. Further, trading of goods was placed within the Negative List under Section 66D(e). The mere fact that in the course of such trading activity, the dealer may be required to achieve certain commercial targets or may receive incentives linked to the volume or performance of sales cannot, by itself, alter the essential character of the underlying transaction from sale of goods into rendition of a service.

18. We now proceed to examine the nature of the incentives in question. The amounts involved include incentives under the Wholesale Target Achievement Scheme, Retail Target Incentive Scheme and Accessories Wholesale Target Scheme. These schemes are admittedly connected with the commercial performance of the dealer in relation to purchase and sale of vehicles, spare parts and accessories. A target-linked incentive in a distribution arrangement is essentially a commercial mechanism whereby the manufacturer extends a discount, rebate or other financial benefit to a dealer upon achievement of specified levels of business.

18.1. In our considered view, the Department's approach of treating the achievement of such targets as an independent "obligation to do an act" for the purposes of Section 66E(e) would overlook the substance of the transaction. The appellant does not undertake a separate activity for HCIL in consideration of the incentive. Its purchase of vehicles and their subsequent sale to customers constitute the very business for which it operates as an authorised dealer. The achievement of a particular volume of sales may determine the extent of the commercial benefit available to the dealer, but it does not follow that the dealer thereby renders a distinct service to the manufacturer. Commercial performance and service rendition are not synonymous merely because the former is measured against predetermined targets.

19. The same principle would apply to the consumer schemes. It is borne out from the materials on record that HCIL periodically circulates schemes intended for customers, under which specified discounts or benefits are extended by the dealer at the time of sale of vehicles. The dealer thereafter claims the

corresponding retail support from HCIL and the amount is reimbursed upon verification, through credit notes. The essential transaction nevertheless remains the sale of the vehicle by the appellant to its customer. The reimbursement received from HCIL represents the commercial adjustment arising from the discount extended in the course of that sale and cannot, merely because the appellant is required to implement the scheme and thereafter claim the corresponding amount from HCIL, be elevated into consideration for a separate service.

19.1. We are, therefore, unable to accept the proposition that the appellant's act of extending a customer discount, or its decision to sell a vehicle at a price lower than the maximum selling price permitted under the dealership arrangement, constitutes an independent taxable service to HCIL. Such conduct forms part of the ordinary commercial operations of a dealer. The sharing or reimbursement of the commercial burden arising from a promotional scheme may affect the ultimate economics of the sale transaction, but does not, in the absence of an identifiable and independent service element, change the character of that transaction.

20. Equally, the aspect, as emphasized by the Revenue, that appellant may be required to make its "best efforts" to achieve the prescribed business targets cannot, in our view, furnish the requisite foundation for invoking Section 66E(e). Such expressions, when viewed in the context of a dealership arrangement, describe the commercial expectations associated with the dealer's business performance. They do not, by themselves, establish a separate contractual quid pro quo under which HCIL pays the appellant for undertaking an activity

independent of the purchase and sale of goods. The Revenue has essentially sought to identify the commercial conditions attached to the incentives as an independent obligation and the incentive itself as consideration therefor. In doing so, however, the intrinsic connection between the incentive and the underlying trading transaction cannot be disregarded.

20.1. The position becomes clearer when the transaction is viewed as a whole. The appellant purchases the vehicles, spare parts and accessories from HCIL; such goods constitute its trading inventory; the appellant thereafter effects sales to its customers; discounts or consumer benefits may be extended in accordance with schemes circulated by HCIL; and the corresponding commercial support or incentive may subsequently be passed on or adjusted through the accounts between HCIL and the appellant. Each of these activities is situated within the same commercial chain of purchase and sale of goods. There is no discernible second or independent stream of activity whereby the appellant renders a service to HCIL for a separately identifiable consideration. In this factual and statutory setting, the mere fact that the incentives or reimbursements are quantified with reference to sales performance, achievement of targets or discounts extended to customers cannot be determinative of their taxability as consideration for a declared service. What is material is the nature of the activity for which the amounts are received. Here, the activity remains rooted in the sale and trading of motor vehicles, spare parts and accessories. The incentives and reimbursements are commercially linked to those sale transactions and cannot, merely by the manner of their computation or accounting, be

converted into consideration for a service under Section 66E(e).

21. The same view has been expressed by the Larger Bench of the Tribunal in the case of *Kafila Hospitality & Travels Ltd. v. Commissioner of S.Tax, Delhi [2021 (47) G.S.T.L. 140 (Tri. – LB)]* wherein it was held that target-based incentives given to business partners/agents for increasing their own volume of sales/bookings cannot be held to be a consideration for rendering any service. The relevant observations therein 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*
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> *78. In this connection it will be appropriate to take note of the decision of the Federal Court of Australia AP 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 :-*
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> > *"17. Insofar as the Ford "retail target incentive" payments are concerned, Ford agreed with its dealers to pay certain sums of money to dealers which achieved monthly and quarterly sales targets that Ford set based on the dealer's size and past performance. Targets were based on the number of cars sold to eligible customers in the qualifying period, not the value of the cars sold. Once a car was sold and delivered to an eligible customer the details would be entered into*

the vehicle information system and, in about the middle of the following month, based on the information so entered Ford would issue the dealer with a tax invoice for the incentive payment plus 10% GST and shortly thereafter pay that amount to the dealer.

30. The Tribunal reached a different view about the Ford "retail target incentive" payments. It reasoned as follows at [I06]-[I08] :

I06. The last remaining payment type is Ford's retail target incentive payment. It is clear from the "Drive for Success" program that the payment is triggered at the time, and by reason, of the Applicant's recording of a level of new sales for a relevant period of eligible vehicles to eligible customers in excess of a specified target set by Ford. Significantly, though, and unlike the fleet rebates and the run-out model support payments, the target incentive payment has no nexus with any one particular supply. It is a payment made in connection with supplies generally, or perhaps more accurately, it is a payment made in connection with the making of supplies generally.

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 manufacture 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 AP 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 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 too a

> *dealer will always wish its ordering arrangements to be the most efficient and economically beneficial to it. The manufacture 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."*

79. Reference can also be made to the decision of this Tribunal in Rohan Motors Limited v. Commissioner of Central Excise, Dehradun [2020 (12) TMI 1014-CESTAT NEW DELHI]. The Tribunal held that incentives are not leviable to service tax. The relevant paragraph is reproduced below :-

> *9. The first issue that arises for consideration is whether service tax would be leviable on incentives prior to July, 2012.*
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> *10. As noticed above, the appellant purchases vehicles from MUL and sells the same to the buyers. It is clear from the agreement that the appellant works on a principal to principal basis and not as an agent of MUL. This is for the reason that the agreement itself provides that the appellant has to undertake certain sales promotion activities as well. The carrying out of such activities by the appellant is for the mutual benefit of the business of the appellant as well as the business of MUL. The amount of incentives received on such account cannot, therefore, be treated as consideration for any service. The incentives received by the appellant cannot, therefore, be leviable to service tax.*

> *80.* ***It, therefore, clearly transpires from the aforesaid decisions that incentives paid for achieving targets cannot termed as "consideration" and, therefore, are not leviable to service tax under Section 67 of the Finance Act."***
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> [Emphasis supplied]

21.1. Again, in *Maya Appliances (P) Ltd. v. Addl. Commissioner of Commercial taxes [2018 (10) G.S.T.L. 6 (S.C.)],* it has been observed by the Hon'ble Apex Court, as under: -

> *"12. The liability to pay tax is on the taxable turnover. Taxable turnover is arrived at after making permissible deductions from the total turnover. Among them are "all amounts allowed as discounts." Such a discount must, however, be in accord with the regular trade practice of the dealer or the contract or agreement entered into in a particular case. The expression "the tax invoice or bill of sale issued in respect of the sales relating to such discount shows the amount allowed as such discount" is not happily worded. The words "in respect of the sales relating to such discount" cannot be construed to mean that the discount would be inadmissible as a deduction unless the tax invoice pertaining to the goods originally issued shows the discount. This is a matter of ascertainment. The assessee must establish from its accounts that the discount relates specifically to the sales with reference to which it is allowed. In the first part of the proviso, Rule 3(2)(c) recognizes trade practice or, as the case may be, the contact or agreement of the dealer. The latter part which provides a methodology for ascertainment does not override the earlier part. Both must be construed together. Above all, it must be remembered that taxable turnover is turnover net of deductions. An trade discounts are allowable as permissible deductions."*

22. We are, therefore, in agreement with the submission made by the appellant that the activities sought to be brought within the ambit of Section 66E(e) are, in substance, activities arising out of and incidental to the appellant's business of sale/trading of goods and do not, merely by reason of the performance-linked nature of the incentives or the reimbursement mechanism, acquire the character of a taxable service. Further, the essential element of an independent service rendered by the appellant to HCIL for consideration is not established from the nature of the transactions placed before us. Hence, we are of the view that the impugned demand of Service Tax cannot be sustained in law and is thus liable to be set aside. The appellant, therefore, succeeds on merits.

23. We also find merit in the appellant's contention on limitation. It is a fact that the Show Cause Cum Demand Notice dated 17/18.10.2019 invoked the extended period under the proviso to Section 73(1) of the Finance Act, 1994, in respect of the period from 2014-15 to 2017-18 (up to 30.06.2017). However, the material on record indicates that the appellant had been filing its ST-3 Returns during the relevant period and had furnished the relevant records and documents to the Department as and when called for during investigation. Significantly, even the investigation conducted at the end of HCIL has not brought on record any material indicative of fraud, wilful misstatement, suppression of facts or a deliberate intent on the part of the appellant to evade payment of Service Tax. We also note that the dispute essentially arises from the Department's interpretation of the taxability of incentives, discounts and reimbursements received in the course of the appellant's trading activity. Further, mere non-

payment of a disputed tax, cannot, by itself, be equated with suppression of facts with intent to evade the payment of Service Tax in the absence of any corroborative evidence. Thus, in the absence of the requisite ingredients for invocation of the extended period, we hold that the extended period of limitation is not invokable and the demand to the extent so raised beyond the normal period is consequently found to be unsustainable, as barred by limitation.

24. The demand of Service Tax against the appellant-company itself having been found unsustainable, the consequential penalties imposed upon it cannot survive. Therefore, we hold that, in the facts and circumstances of the present case and for the reasons discussed hereinabove, no penalty is imposable upon the appellant-company under Sections 77 and 78 of the Finance Act, 1994. The same are, accordingly, liable to be set aside.

25. In view of the aforesaid findings, we pass the following order:

(i) The demand of Service Tax amounting to Rs.1,18,40,547/- confirmed vide the impugned order stands set aside.

(ii) In consequence of the above finding on the demand, and having regard to the nature of the dispute and the circumstances of the case, the penalties imposed upon the appellant-company under Sections 77 and 78 of the Finance Act, 1994, are also set aside.

26. Consequently, the impugned order to the extent under challenge, is set aside.

27. In the result, the appeal is allowed, with consequential relief, if any, as per law.

(Order pronounced in the open court on **02.11.2026**)

Sd/-

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd