

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38, M.G. Marg, CIVIL LINES, ALAHABAD**

Dated: 24/11/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70057/2015 & SO/70013/2015- dated 13/10/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

SPS / *[Signature]* 24/11/15
Asstt. Registrar

Application	Appeal	Name and Address of Appellant
ST/S/53048/2014	ST/52619/2014	TANYA AUTOMOBILES P LTD 6 TH KM STONE MEERUT ROAD, MUZAFFARNAGAR(UP)

Name and Address of Respondent	CCE MEERUT EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT(UP).
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Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s): SH VINEET KUMAR SINGH, ADV
5 NARAIN NAGAR, SECTOR 11
INDIRA NAGAR, LUCKNOW(UP)

4 P.A. Association, CESTAT, Delhi

5 Director Publications, Customs, Excise, I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisam Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaidyanagar Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 Easy Service Tax Online Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-35

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Vihar, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

13 The ICFAI society, 52, Nagarjuna Hill Panjagutta Hyderabad.-500082

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT ALAHABAD
COURT NO. 1**

Application No. ST/S/53048/14 in Appeal No. ST/52619/14

(Arising out of Order-in-Appeal No. 31-ST/MRT-1/2013/828 dated 19.11.2013 passed by the Commissioner of Central Excise & Service Tax (Appeals), Meerut-I).

For approval and signature:

Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri Raju, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
 2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
 3. Whether their Lordships wish to see the fair copy of the order? : Seen
 4. Whether order is to be circulated to the Departmental authorities? : Yes
- =====

M/s Tanya Automobiles (P) Ltd. Appellant

Vs.

Commissioner of Central Excise & Service Tax, Meerut-I

Appearance:

Shri Vineet Kumar Singh, Advocate for Appellant

Shri Chatur Singh, AC (AR) for Respondent

CORAM:

SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)
SHRI RAJU, MEMBER (TECHNICAL)

Date of Hearing: 13.10.2015

Date of Decision: 13.10.2015

Final ORDER NO. 70057/2015

Per: Anil Choudhary



The appellant is an Authorized Service Station of Motor Vehicles. A show-cause notice dated 19.4.2012 was issued subsequent to audit during the December, 10/January, 11 wherein it appeared that the appellant was paying Service Tax on the labour charges only and not paying ST on value of spare parts and lubricants used in the course of servicing of the motor vehicles. It appeared to Revenue that the practice was not in tune under Rule 5 & 6 of Service Tax (Determination of Value) Rules, 2006 read with Section 67 of the FA read with CBE&C Circular No. 96/8/2007-Service Tax. Further it appeared to revenue that the CBE&C Circular No. 87/05/2006-Service Tax clarified that in respect of spare parts and consumables, which have been consumed during the process and are not available for sale, for availing such exemption in terms of Notification No. 12/2003-ST, the goods must be sold and consequently they must be available for sale. It further appeared to Revenue that whether spare parts or consumables are consumed during the servicing of the vehicles, the Service Tax is to be discharged on entire amount of invoice/bills including the value of spare parts raised by the party against the servicing of vehicles. It was further observed in the show-cause notice that where the party is liable to pay Service Tax on the entire invoices/bills raised by them, then by virtue of Notification No. 12/03-ST exemption is available to the extent of value of the goods and materials sold by the service provider to the service recipient, subject to the documentary proof of such sale exists and no credit of Central Excise duty paid on consumables and spares has been taken. It was further observed that the appellant is not entitled to benefit of Notification No. 12/03 as they are not issuing separate invoices for sale of spares. It

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further appeared to the Revenue that the spare parts and consumables utilized in the course of servicing of vehicles without which the service is not complete and hence an integral part of service. Accordingly, Service Tax was proposed to be levied on the amount relating to spare parts and lubricants for the extended period October, 2006 to December, 2011 amounting to Rs.5,81,935/- with interest and further proposal of penalty under Sections 76, 77 & 78 of the Finance Act.

2. The appellant contested the show-cause notice by filing a written submission pointing out that they are showing the spare parts and lubricants separately in the invoice on which VAT/Sales Tax is being paid and on service components and labour charges, the Service Tax is being paid. Thus, no Service Tax can be levied on the sale of goods.

3. The show-cause notice was adjudicated vide Order-in-Original dated 8.3.2013 and reduced amount of Rs.4,74,146/- was confirmed considering that the appellant have already deposited an amount of Rs.1,10,635/- for the period April, 11 to December, 11 which was confirmed by the Asstt. Commissioner along with interest and further penalty was imposed under Section 76 @ Rs.200/- for every day during failure continue or at the rate of 2% of such tax, per month, whichever is higher upto the period 9.5.2008. Penalty of Rs.10,000/- was imposed under Section 77 and Rs.4,74,146/- under Section 78 of the Finance Act.

4. Being aggrieved, the appellant preferred an appeal before the Commissioner (Appeals), who vide the impugned order has been pleased to reject the appeal and has upheld the Order-in-Original.

5. Being aggrieved, the appellant is in appeal before this Tribunal.

6. The learned Counsel for the appellant urges that the issue is no longer *res integra* as the same stands settled by order of another Division Bench of this Tribunal in the case of Samtech Industries Vs. Commissioner of Central Excise - 2015 (38) STR 240 (Tri-Del), wherein the assessee was providing the service of repairing transformer and was using consumables like transformer oil and also component parts being coil etc., this Tribunal held, in view of the fact that it is not disputed that in respect of the supply of goods, used for providing of service of repair, Sales Tax/VAT is paid, which fact is evident from the invoice on record. It was also observed that when the value of goods used is shown separately in the invoice and on the same Sales Tax/VAT has been paid, the supply of the goods would have to be treated as sale and the transaction which are sale cannot be a part of the service transaction. Accordingly, Service Tax is chargeable only on the services/labour charges and the value of the goods thereunder would not be includible in the assessable value. The Tribunal further observed that Rule 5(1) of Service Tax (Determination of Value) Rules, 2006 has been struck down as *ultra vires*, the provisions of Section 66 & 67 of the Finance Act by the Hon'ble Delhi High Court in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. Vs. Union of India & Others - 2013 (29) STR 9 (Del), it is categorically held that the value of goods used for providing the services which have been shown separately in the invoice, on which Sales Tax/VAT has been paid, cannot be included in assessable value and no Service Tax can be charged on the same.

6.1 The learned Counsel draws our attention to the finding of the Commissioner (Appeals), wherein it is observed as follows: -

"I observe that the appellants are paying Service Tax on labour charges, i.e., servicing components of the bills and paying VAT on value of the spare parts and consumable and lubricants."

"I have perused copies of two sample bills enclosed with the appeal and find that the consumables e.g., gasket, filter, components, busing etc. are shown sold along with the service, are in the nature of integral part of the service."

Accordingly, he urges that in view of the categorical finding that the appellants have charged the spare and lubricants separately in their invoice and have paid Sales Tax on the same, no Service Tax can be demanded and the learned Commissioner (Appeals) has erred in holding that Service Tax is applicable on the goods and lubricants observing that the service is not complete without using of consumables and lubricants.

6.2 The learned Counsel further points out that ruling of the Tribunal in the case of Samtech Industries (supra) has been upheld by the Hon'ble High Court of Allahabad reported at 2015 (38) STR 4434. The learned Counsel also brings to our notice that in similar facts and circumstances in the case of M/s Balaji Tirupati Enterprises, the CB&EC (Legal Cell) vide their letter dated 27.9.2013 addressed to the Commissioner of Central Excise, Meerut has observed as follows: -

"The matter has been examined. Upon examination, it has been observed that the party has specifically mentioned the cost of items supplied/sold and there is documentary proof specifically indicating value of the goods. In this situation in view of the Notification No. 12/2003-ST dated 20.6.2003 and Hon'ble Supreme Court decision in the case of Commissioner Vs. Jain Brothers - 2012 (28) STR 162 (SC) demand of Service Tax against the party for the cost of goods supplied during repair does not appear sustainable. Therefore, the Board is of the view that in the overall facts and circumstances of the case, no purpose would be served in pursuing SLP in the matter."

6.3 He further urges that in view of the fact that Board have accepted the legal position and have not filed further appeal in the matter, the appeal is fit to be allowed.

7. Heard learned DR, who supports the impugned order. On query from the Bench, as regards the matter has been settled in view of the Board's letter dated 27.9.2013, the learned DR submits that the Tribunal may pass appropriate order.

8. Having considered the rival contentions and in view of the settled legal position in the case of Samtech Industries (supra), upholding the order of this Tribunal by the Hon'ble High Court of Allahabad and also in view of the letter of the CBE&C accepted the legal position that the cost of items supplied/sold and there is documentary proof specifically indicating value of the goods, the demand of Service Tax against the assessee for the cost of the goods supplied during repair does not appear sustainable. In this view of the matter, we set aside the impugned order and allow the appeal with consequential benefits.

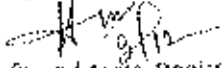
9. The stay application is also stand disposed of.

(Dictated and pronounced in Court)


(RAJU)
MEMBER (TECHNICAL)


(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित नति / Certified True Copy


Anil Choudhary / Asstt. Registrar
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