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

Dated: 30/12/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70112/2015 dated 17/12/2015

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.**

Asstt. Registrar/SPS

Application	Appeal	Name and Address of Appellant
	ST/200/2010	ANAND MOTOR AGENCY 21, VIDHAN SABHA MARG LUCKNOW226001

Name and Address of Respondent: CCE, LUCKNOW
7-A, ASHOK MARG
LUCKNOW(UP)

Other Appellants and Respondents as per Annexure

Copy To

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

4 Bar Association, CESTAT, Delhi
5 Director Publications, Customs, Excise. I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070

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

13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar/SPS
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

S.T. Appeal No.200/10

Arising out of O/O No.63/Commissioner/LKO/ST/2009 dated 30.10.2009 passed by Commr. of Central Excise & Service Tax, Lucknow.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)

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 His Lordship wishes to see the fair copy of the Order?	: Seen
4.	Whether Order is to be circulated to the Departmental Authorities?	: Yes

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M/s Anand Motor Agency ...APPELLANT(S)

VERSUS

Commissioner of Central Excise & S. Tax, Lucknow RESPONDENT (S)

APPEARANCE

Shri Vineet Kumar Singh, Adv. for the Appellant (s)
Shri M. K. Sarangi, Joint.Commr. (D.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 17.12.2015

FINAL/ORDER NO. 70112/2015

Per Mr. Anil Choudhary :

The Appellant, M/s Anand Motor Agency, is in Appeal against Order-in-Original No. 63/Commissioner/LKO/ST/2009 dated 30.10.2009 passed by Commr. of Central Excise & Service Tax, Lucknow, wherein demand have been confirmed on handling charges, sale of extended warranty, registration charges and spare parts and lubricants, on which VAT/Sales Tax have been paid.

2. Brief facts are that show-cause notice dated 16.10.2008 was issued for extended period from 2003-04 to 2007-08 proposing levy of service tax under the various headings for the aforementioned services under the classification of Business Auxiliary Services (BAS) or Business Supporting Services (BSS) etc. The appellant contested the show-cause notice and vide the impugned order, the service tax of Rs.1,28,210/- towards handling charges being amount received by the appellant from the customer towards loading and un-loading of the vehicle, on sales of extended warranty amounting to Rs.15,35,529/- , on registration charges amounting to Rs.6,04,439/- received for getting the vehicle sold, registered with the Regional Transport Authority or the Registration authority of the State Government and Rs.1,02,39,375/- on sales of spare parts and lubricants totaling Rs.1,25,07,553/-. Being aggrieved, the Appellant is before this Tribunal.

3. So far as the issue of handling charges is concerned, the appellant states that the same are part of the trading receipts related to purchase and sale of the goods and as such, no service tax is payable on this. So far as sale of extended warranty is concerned, the

appellants have demonstrated before us that they had purchased the extended warranty coupons from the manufacturer and sold to the buyers and earned some discount/commission on the same. It is further argued that the gross sale value is, wrongly taxed and at best only the net discount and commission earned is taxable. The ld. Counsel further argues that no proper classification have been given either in the show-cause notice or in the impugned order. As such, imposition of tax is vitiated and fit to be set aside.

4. So far as the registration charges is concerned, they have discharged their statutory obligation under Rule 42 of the Motor Vehicle Rules, 1989, which provides " no holder of trade certificate shall deliver the motor vehicle to purchaser without registration, whether temporary or permanent". It is urged that they have generated some surplus and the same is not classifiable under any head of service and as such, levy of service tax is improper and the same fit to be set aside. He further argued that the surplus earned on the registration work, cannot be classified either under BAS & BSS, as they are not supporting business of State Government or the buyers of Car/Vehicle.

5. In so far as the sale of spares and lubricant is concerned, the ld.Counsel demonstrates that it is admitted fact in the impugned order that they have shown the sale of spares and lubricants separately in the common invoices for the repair services and also paid sales tax on such spares and lubricants, thus no service tax can be levied on the sale as the sales tax and service tax are mutually exclusive. The ld. Counsel further states that the issue is no longer *res-integra* and

settled by the decision of the Hon'ble Allahabad High Court in the case of Commr. of Customs & Central Excise Vs. J. P. Transformers : 2014 (36) STR 961 (All.), wherein the issue before the Hon''ble High Court was - whether the Tribunal has erred in holding that service tax is not required to be paid on goods used in the repairing process, on which Excise duty and VAT has been paid on the value of the said goods. The Hon'ble High Court held that it has been found in the matter of fact that the value of goods and the materials utilized for repair, is separately disclosed in the agreement and it is separately mentioned in the invoices of the assessee. Further, the assessee has paid excise duty and sales tax on such goods, used in repairing process. Accordingly, the Tribunal was correct in holding that no service tax could be demanded on the components representing value of goods and materials used for carrying out repair.

6. The ld. D.R. for the Revenue, relies on the impugned order and prays for dismissal of Appeal.

7. Having considered the rival contentions, we hold that the service tax is not exigible on handling charges, registration services and sale of spares and lubricant, which have been separately reflected in the invoices and have suffered VAT/Sales tax. We further hold that the handling charges are in the nature of trading receipt and is not taxable. In respect of the registration charges, they have discharged their statutory obligation, as such, it is not taxable. In so far as the service tax on sale of extended warranty is concerned, although we find that the service tax may be ~~extigable~~ exigible on the net discount/commission earned, but in absence of proper classification,

both in the show-cause notice and the impugned order, we set aside the demand on this count. Accordingly, we allow the appeal and set aside the impugned order. The appellant will be entitled to consequential benefit, if any, in accordance with law.

(Dictated and pronounced in the open Court)

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(A.CHOUDHARY)
MEMBER (JUDICIAL)