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REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 20/07/2017

To
Appellant as per address in table below
Respondent as per address in table below

Final Order No. ST/A/70659/2017-CU[DB] dated **10/07/2017**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the **Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/51667/2014	**Skyline Motors India Pvt Ltd** O-94, Sector-12 NOIDA UP 201301
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

Copy To
3Advocate(s) / Consultant(s):

V.S. Negi
C-1/152-153, NEW KONDLI,
MAYUR VIHAR-III,
DELHI
110096

4 Bar Association, CESTAT, Allahabad

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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

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

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

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

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/51667/2014-CU[DB]

(Arising out of Order-in-Appeal No. NOI/EXCUS/000/APPL/247/2013-14 dated 20.12.2013 passed by Commissioner of Central Excise (Appeals), Customs & Service Tax, Noida)

M/s Skyline Motors India Pvt. Ltd. **Appellant**

Vs.

Commissioner of Customs, Central Excise & Service Tax, Noida **Respondent**

Appearance:

Shri V. S. Negi, Advocate, for Appellant
Shri Devendra Nagvenkar, Additional Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. C. J. Mathew, Member (Technical)

Date of Hearing & Date of Decision: 18/11/2015

FINAL ORDER NO. 70653/2017

Per: Anil Choudhary

The Appellant, M/s Sky Line Motors India Pvt. Ltd., is in Appeal against Order-in-Appeal No.NOI/EXCUS/000/APPL/247/2013-14 dated 20.12.2013 passed by Commissioner of Central Excise (Appeals), Customs & Service Tax, Noida.

2.1 Brief facts are that the Applicant is a transporter owning buses and engaged in the transporting facility under the category of "Rent a Cab Scheme Operator Services" to the unit located in SEZ and also to some educational institutions.

2.2 A show-cause notice dated 17.10.2012, was issued for the extended period of 2007-08 to 2011-12 as it appeared to Revenue that the Applicants have not paid the service tax amounting to Rs.7,07,439/-. As it appeared on the scrutiny of record that the applicants have rented buses to Hospitals, Guest Houses and some other Parties, but failed to pay the applicable service tax. It further appears that in so far the renting of their buses to M/s Thomson Press, a unit in SEZ, no service tax have been charged nor paid. As it appeared to Revenue that the said service is not fully consumed within the SEZ and as such, the benefit would not be available under Notification No.4/2004-ST dated 31.03.2004, which was superseded by Notification No.9/2009-ST dated 03.03.2009 and further superseded by Notification No.17/2011-ST dated 13.03.2011, vide which it is specified that the services received and used for authorized operator, are wholly consumed within SEZ. Further, the demand of Rs.2,44,665/- was proposed being the amount of service tax short paid along with interest and further penalty was proposed under Section 76 & 78 of the Finance Act, 1994.

2.3 The Appellants contested by filing reply to the show-cause notice and the show-cause notice was adjudicated by the Order-in-Original dated 31.07.2013 confirming proposed amount of Rs.7,07,439/- along with interest and other amount of Rs.2,44,665/- was also confirmed along with interest and the said amount was appropriated having been deposited vide Challan dated 22.06.2012. Further, penalty under Section 78 of the Finance Act, 1994, was also imposed.

2.4 Being aggrieved, the Appellant preferred an Appeal before the ld. Commissioner (Appeals) for an amount of Rs.2,94,533/- on renting of buses to M/s Thomson Digital, a Unit of SEZ, Rs.4,12,906/- on renting of buses for providing service to the Educational Institute. The ld. Commissioner (Appeals) was pleased to dismiss the appeal vide Order-in-Appeal dated 20.12.2013. Being aggrieved, the Applicant is before this Tribunal.

3. The ld. Counsel for the Applicant points out that the rent-a-cab service provided to a unit in SEZ is fully consumed in SEZ and the ld. Commissioner (Appeals) has erred in observing that part of the service is not consumed within SEZ, as transport facility provided is for transportation of the employees of SEZ i.e. from the Office to the Residence (Located outside SEZ). It is argued that the services is consumed by the Unit located in SEZ, as the benefit of such service accrues, through the employee, is admittedly received by the Unit located in SEZ. The Applicant also relies on the ruling of the Division Bench of this Tribunal in the case of Norasia Container Lines Vs. Commissioner of Central Excise, New Delhi reported in 2011 (23) STR 295 (Tri.-Del.), wherein under the fact that the container is provided to the SEZ for transport of raw materials from outside the SEZ to the Unit at SEZ and also for transport of final product from SEZ to a

D.T.A. Unit. It was held that the whole service accrues to the Unit located in SEZ as on the harmonious reading of the Notification 4/2004-ST which uses the expression "for consumption of services" within such "Special Economic Zone", but at the same time also uses the expression "taxable service provided to a unit of the SEZ". In this context, Section 26 of the SEZ Act provides for exemption from service tax under Chapter V of the Finance Act, 1994 on taxable services provided to a developer or unit to carry on the authorized operations in a Special Economic Zone. For the said purposes, the ruling in Norasia was also followed by another Division Bench of this Tribunal in the case of Mahalakshmi Travels Vs. CCEx.,C & S.Tax, Visakhapatnam I, reported in 2014 (34) STR 849 (Tri.-Bang.) wherein in similar circumstances as in the case of the appellant, full waiver of predeposit was allowed to the Applicant.

4. As regards the demand of Rs.4,12,906/- for providing service to the Educational Institute, it is urged that the Applicant had entered into transport contract for some schools for transporting the students and staff to and fro from the school to the residence. For the sake of convenience, the Applicant entered into an agreement with similarly situated transporter, namely, The Sun National Transport Service to the effect that both are engaged in transporting the staff and the student of various schools and accordingly, agreed to sharing of spare capacity for transport of the staff and the

student of the school(s), with which they had entered into the transportation contract. As admittedly transportation has been done for the staff and the students of the school, the demand is fit to be set aside. It is further stated that in view of this appeal may be allowed.

5. The ld. DR. for the Revenue, relies on the impugned order.

6. Having considered the rival contention, in terms of Instruction No. 79 dt. 19.11.2013 issued by M.C. & I. (D.C.), SEZ Division, we find that rent a cab service is an approved service for the unit located in SEZ. Accordingly, we hold that such service is wholly exempted being provided to the SEZ unit. So far the services provided to Educational Institute is concerned, though a part of it is provided to or through another transporter, similarly situated, under the agreement to share mutual spare capacity, it appears that as the services are admittedly provided for transport of staff and student of the schools, the same appears to be permitted exemption/not taxable under the definition in Clause 65 (20) of the Finance Act, 1994. In view of the said proviso, service provided under rent-a-cab operating services for use by an educational body imparting skill or knowledge or lesson on any subject or field, other than a commercial training or coaching centre, are not includible in the meaning of "cab" and hence not taxable in the "rent-a-cab operator service". Accordingly, we allow the appeal and set aside the impugned

order. The appellant will be entitled for consequential relief in accordance with law.

(Dictated and pronounced in Court)

Sd/-

(C. J. Mathew)
Member (Technical)

Sd/-

(Anil Choudhary)
Member (Judicial)

Ansari

प्रमाणित प्रति/Certified True Copy
26/07/2017
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001