FAX : 0532-2400149

REGISTERED / AD

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

Dated: 19/04/2017

To

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

Final Order No. ST/A/70379/2017-CU[DB] dated 13/04/2017

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/70031/2015	**Pandit Automobiles** 3/1/1,site -iv,industrial Area,sahibabad GHAZIABAD UP
		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):

Somesh Arora,Advocate
D-302, PLOT NO 13, SHUBHAM
APARTMENTS, SECTOR-22,
DWARKA,
NEW DELHI,
DELHI
110077

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/70031/2015-CU[DB]

(Arising out of Order-in-Appeal No. GZB/EXCUS/000/APP/28/2015-16 dated 30/06/2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Noida)

M/s Pandit Automobiles **Appellant**

Vs.

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

Appearance:

Shri Somesh Arora, Adovate, for Appellant
Shri Pawan Kumar Singh, Superintendent (AR) for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision: 13/04/2017

FINAL ORDER NO...70375/2017........

Per: Anil Choudhary

The present appeal is filed by the appellant - M/s Pandit Automobiles, against Order-in-Appeal No. GZB/EXCUS/000/APP/28/2015-16 dated 30/06/2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Noida.

2. The issues in this appeal by the appellant herein are as follows: –

(i) Whether service tax is payable on the spare parts/consumables used in the service of motor vehicles by the appellant, who is an authorized service station of the manufacturer – Maruti Udyog Ltd.

(ii) Whether the appellant is required to pay service tax on the amount received from manufacturer for providing three free services to the customer, during the warranty period.

(iii) Whether the appellant is required to pay service tax on the amount of rent receivable shown in the books of account, admittedly not received.

3. Heard both the parties.

4. So far the first issue is concerned, I find that the ld. Commissioner have relied upon the Larger Bench ruling of this Tribunal in the case of Larsen & Toubro Ltd. *Versus* CST, Delhi reported at 2015 (38) S.T.R. 266 (Tri. – LB), which has been reversed by the Hon'ble Supreme Court in Larsen & Toubro Ltd. *Versus* Union of India being judgment dated 14/08/2015. Thus, the first issue is decided in favour of the appellant. We hold that Service tax is not payable on Spares & Consumable shown separately in the invoice and on which admissible VAT/Sales tax is charged or paid.

5. So far the second issue is concerned, regarding tax liability on the amount paid by the manufacturer to the appellant for the three free services and/or pre-delivery inspection given to the customers, during the warranty period, we find that the said issue is no longer *res-integra* and a Coordinate Bench of this Tribunal in the case of Commissioner of Central Excise & Customs, Nashik *Versus*

Automotive Manufacturers Ltd. reported at 2016 (42) S.T.R. 448 (Tri. – Mumbai) have held that undisputably charges for such services are not received from customers, and the same being part of margin given by manufacturers to the dealer. Payment of bills, for free services, by manufacturer to servicing dealer is an internal arrangement and had nothing to do with the payment for services provided by the selling dealer to customers of car. Accordingly held, no service tax is payable. Accordingly, we hold this ground also, in favour of the appellant.

6. So far the third issue is concerned, the learned Counsel for the appellant have demonstrated from their ledger that the amount of rent was only booked as receivable but the same was not received, as the said amount appeared as opening balance (receivable) from the concerned party in next accounting year. The learned counsel also filed a certificate from the Chartered Accountant who have also certified that the rental income booked by the appellant is booked on the mercantile basis during the financial years 2008-09 & 2009–10, still stands recoverable in the books of account due to non-receipt of payments, the certificate is dated 11/04/2017. Accordingly, service tax was not chargeable at that time on the basis of raising of bills but was leviable only on the receipt of consideration for the service. Accordingly, we hold that no service tax is payable on the rent receivable, but admittedly not received by the appellant.

Accordingly the appeal is allowed in favour of the appellant on all the three issues. The impugned order is set aside. The appellant will be entitled to consequential benefits, if any, in accordance with law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Ansari

प्रमाणित प्रति / Certified True Copy
03/05/2017
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001