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: 12/10/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71205/2017-SM[BR] dated 06/10/2017

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
:	ST/70070/2017	**Kuldeep Motor Private Limited** Pakka Bagh,kanpur Road ETAWAH UP
		Name and Address of Respondent
:		C.C.E. & S.T-Agra COMMISSIONER OF CUSTOMS, CENTRAL EXCISE & SERVICE TAX113/4, SANJAY PLACE, AGRA U.P.-282002

Copy To

3Advocate(s) / Consultant(s):

Dharmendra Srivastava & Associates, C.A
13/392(I) CIVIL LINES,
KANPUR,
UTTAR PRADESH

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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD
COURT No. 2

APPEAL No. ST/70070/2017-ST[SM]

(Arising out of Order-in-Original No.AGA-EXCUS-000-COM-027-16-17 dated 03/11/2016 passed by Commissioner of Central Excise & Service Tax, Agra)

M/s Kuldeep Motor Privated Limited **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Agra **Respondent**

Appearance:

Shri Dharmendra Srivastava, Chartered Accountant, for Appellant
Shri Mohd. Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 06/10/2017

FINAL ORDER NO. 71295/2017

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Original No.AGA-EXCUS-000-COM-027-16-17 dated 03/11/2016 passed by Commissioner of Central Excise & Service Tax, Agra.

2. The brief facts of the case are that the appellants were issued with statement of demand dated 12/04/2016. The said statement of demand was in continuation of earlier Show Cause Notice dated 21/10/2015 for the period from 2010-11 to 2013-14. The present statement of demand dated 12/04/2016 was for the Financial Year 2014-15. Through the

said statement of demand Service Tax amounting to Rs.1,06,30,066/- was proposed to be recovered under Section 73 of Finance Act,, 1994. The appellants submitted their submissions before the Original Authority. The Original Authority decided the issue through impugned Order-in-Original dated 03/11/2016. The Original Authority confirmed the demand of Service Tax Rs.2,32,895/- and dropped the demand of Rs.1,03,97,171/-. The Original Authority imposed penalty of Rs.23,290/- under Section 76 of the Finance Act, 1994 and another penalty of Rs.10,000/- under Sub-Section (2) of Section 77 of the Finance Act, 1944. Being aggrieved by the said order, appellant preferred the present appeal before this Tribunal.

3. Heard the ld. Counsel for the appellant, who has contested the confirmation of demand of Service Tax of Rs.1,03,386/-confirmed by the Original Authority on the reimbursement discount allowed by appellant to their customers and reimbursed by M/s Maruti Udyog Limited. Further, he has submitted that they are contesting confirmation of demand amounting to Rs.26,633/- confirmed on the value which reflected credit balance as written back meaning thereby the amount due to be refunded to certain customers is added to the profit of the organization. The ld. Counsel has further submitted that in Para 12.9 of the impugned Order-in-Original the Original Authority has held "I

thus find that the amount received under this head is for the provisions of certain taxable services and leviable to service tax." In respect of amounts which were written back, the ld. Counsel has submitted that Original Authority in Para 17 has held "These amounts may be related to servicing of motor vehicles and thus taxable." He has further submitted that the Original Authority has not given clear finding and given finding indicating that presumptions were involved in the same.

4. Heard the ld. A. R. for Revenue who has supported the impugned Order-in-Original dated 03/11/2016.

5. Having considered the rival contentions and on perusal of the facts on record, I find that the finding of Original Authority in respect of discount dealt with in Para 12.9 of the impugned Order-in-Original and amounts written back dealt with in Para 17 of the impugned Order-in-Original are presumptive in nature and on the basis of presumptions the demand cannot be confirmed. Therefore, I set aside the demand confirmed amounting to Rs.1,03,386/- and Rs.26,633/- through impugned Order-in-Original. I, therefore, modify the impugned Order-in-Original to that extent in respect of confirmation of demand of Service Tax. I, further, modify the impugned Order-in-Original in respect of penalty imposed under Section 76 of the Finance Act, 1994

by reducing the penalty by an amount of Rs.13,002/-. Thus the appeal is allowed, in above terms. The appellant shall be entitled for consequential relief, as per law.

(Dictated & Pronounced in Court)

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

Ansari

प्रमाणित प्रति/Certified True Copy
25/10/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
36, एम.जी.मार्ग, इलाहाबाद-211001
36, M. G. MARG,ALLAHABAD-211001