IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

ST/618 to 620/2009

(Arising out of Orders-in-Appeal No.55, 56 and 57/2009-(M-ST) all dated 9.9.2009 passed by the Commissioner of Central Excise (Appeals), Chennai)

Commissioner of Service Tax, Chennai — Appellant

Vs.

M/s. Kun Auto Company Pvt. Ltd. — Respondent

Appearance

Shri R. Subramaniyam, AC (AR) for the Appellant
Ms. Nandita Dass, Advocate for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **11.08.2017**

Final Order Nos. 41641 - 41643/2017

Per Bench

The issue in dispute in these appeals is to whether service tax is leviable on 'free after sales service' which the department considers to be inbuilt in the dealer's margin, stands settled against the Revenue in the assessee's own case vide Final Order No. 1465/2009 dated 16.10.2009 and also in the case of K.P. Automobiles Pvt. Ltd. Commissioner of Central

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Excise, Jaipur – 2009 (13) STR 389 which has been followed by the Tribunal in the case of Commissioner of Central Excise, Nashik Vs. Automotive Manufacturers Ltd. – 2016 (42) STR 448 (Tri. Mumbai). In all these cases, the Tribunal has held that it is only a presumption of the department that the dealer's margin was inclusive of the cost of free after sales service rendered during the warranty period and set aside the demand of service confirmed on such basis. Following the ratio of the above decisions, we uphold the impugned order and set aside the demand and penalty and reject the appeals filed by Revenue.

(Operative portion of the order was pronounced in open court)

Sulekha Beevi

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

Rex

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति / Certified True Copy
1/5/19
सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (CESTAT)
चेन्नै / Chennai