CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 1

SERVICE TAX Appeal No. 51890 of 2015

(Arising out of Order–in-Original No. ALW-EXCUS-000-COM-011-14-15 dated 04.03.2015 passed by Commissioner of Central Excise- Alwar)

M/s. M G Motors **...Appellant**
Tijara Road, Leyland Circle,
Alwar

Versus

Commissioner of Central Excise, Alwar **....Respondent**
A Block, Surya Nagar,
Alwar, Rajasthan- 301001

APPEARANCE:
Mr. A.K. Prasad, Ms. Surbhi Sinha, Advocate for the Appellant
Mr. Vivek Pandey, Authorised Representative for the Respondent

CORAM : HON'BLE MR.JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing/ Decision: **13.11.2019**

FINAL ORDER No.: 51579 / 2019

JUSTICE DILIP GUPTA

The Commissioner of Central Excise, Alwar[1] by order dated 27 February 2015 has confirmed the demand of service tax for the period from 2009-10 to 2012-13 with interest and penalty. It is this order of the Commissioner that has been assailed in this appeal.

2. The issue involved in this appeal is as to whether the

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1. the Commissioner

value of spare parts sold while servicing a motor vehicle is required to be included in the value of taxable service under Section 67 of the Finance Act 1994[2]. The Commissioner has relied upon the Master Circular dated 23 August 2007 to hold that the value of spare parts has to be included in the value of taxable service.

3. Shri A.K. Prasad learned Counsel for the Appellant has submitted that the issue involved in this Appeal has been decided in favour of the Appellant in its own case for the subsequent period in Service Tax Appeal No. 50201 of 2017 and Service Tax Appeal No. 50223 of 2017 decided on 29 June 2017.

4. Learned Authorised Representative of the Department has, however, submitted that the findings recorded by the Commissioner do not suffer from any infirmity.

5. The submissions advanced by the learned Counsel for the Appellant and the learned Authorised Representative of the Department have been considered.

6. Both the sides have placed reliance upon the Circular dated 23 August 2007. It would be appropriate to reproduce the relevant portion of the circular dealing with spare parts sold

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2. the Act

during the Service of vehicles and it is as follows:

Reference Code	Issue	Clarification
(1)	**(2)**	**(3)**
036.03/ 23-8-07	Whether spare parts sold by a service station during the servicing of vehicles is liable to payment of service tax? Whether exemption can be claimed on the cost of consumables that get consumed during the course of providing service?	Service Tax is not liable on a transaction treated as sale of goods and subjected to levy of sales tax/ VAT. Whether a given transaction between the service station and the customer is a sale or not, is to be determined taking into account the real nature and material facts of the transaction. Payment of VAT/ sales tax on a transaction indicates that the said transaction is treated as sale of goods. Any goods used in the course of providing service are to be treated as inputs used for providing the service and accordingly, cost of such inputs form integral part of the value of the taxable service. Where spare parts are used by a service station for servicing of vehicles, service tax should be levied on the entire bill, including the value of the spare parts, raised by the service provider, namely, service stations. However, the service provider is entitled to take input credit of excise duty paid on such parts or any goods used in providing the service wherein value of such goods has been included in the bill. The service provider is also entitled to take input credit of service tax paid on any taxable services used as input services for servicing of vehicles

7. A bare perusal of the aforesaid Circular dated 23 August 2007 indicates that Service Tax would not be leviable on a transaction treated as sale of goods and subjected to levy of Sales Tax/ VAT and whether a given transaction between the service station and the customers is a sale or not is to be determined taking into account the real nature and material facts of the transaction. The Circular also clarifies that payment of VAT or

Sales Tax on a transaction indicates that the said transaction is treated as sale of goods.

8. The aforesaid circular was interpreted by the Division Bench in **M.G. Motors** in the Appeals filed by the Appellant in regard to the same issue for the subsequent period. The Division Bench noted the submission of the Appellant in the following words:

> "The Appellant pleads that there is Board's Circular No. 96/7/2007-ST dated 23 August 2007 stating that service tax is not leviable on the transaction of sale, treated as sale of goods and subjected to levy of Sales Tax/VAT. When the subject transactions involve sale of spare parts on which Sales Tax/ VAT has been levied, there is no question of charging service tax on the gross value of the subject spare parts used in servicing of motor vehicles by the authorized service station."

9. The Division Bench relied upon the observations of the Tribunal in **Semtech Industries** which are as follows:

> "5. We have considered the submissions from both the sides and perused the records. The appellants provided the services of repair of transformers to their customers and in course of repair, they used various parts and consumables like transformers oil, for which separate amounts were shown in the invoices. The invoices issued by them show the value of the goods used and the service charges separately. The amounts charged for various parts like HV/LV oils and transformer oil are as per the rates specified in the contracts. **It is not disputed that in respect of the supply of the goods used for providing the service of repair, Sales Tax/VAT is paid. This fact is clear from the invoices placed on record. In view of this, the appellants' contracts with their customers have to be treated as split contracts for supply of goods and rendering the service. When the value of the goods used has been shown separately in the invoices and Sales Tax/VAT has been paid on the same, the supply of the goods would have to be treated as sale and the transactions which are sale, cannot be the part of service transaction. In view of this, we hold that Service Tax would be chargeable only on the Service/Labour charges i.e. on service component**

> **and the value of goods used for repair would not be includible in the assessable value of the service**. The learned DR has cited Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 accordingly to which that "where any expenditure or costs are incurred by any service provider in the course of providing a taxable service, all such expenditures or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value of the services for the purpose of charging Service Tax on the said service, unless such costs or expenditure have been incurred by the service provider as "Pure Agents" of the service recipient. However, this Rule has been struck down as ultra vires the provisions of Section 66 & Section 67 of the Finance Act, 1994 by Hon'ble Delhi High Court in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. v. Union of India & Others Ltd. reported in 2012- TIOL-966-HC-Del.-ST = 2013 (29) S.T.R. 9 (Del.). **In view of this judgment of Hon'ble Delhi High Court, the value of goods used for providing the service, which had been shown by the appellant separately in their invoices and on which Sales Tax/VAT had been paid, cannot be included for assessable value and no Service Tax can be charged on the same.** The impugned orders, therefore, are not sustainable. The same are set aside. The appeals are allowed. Miscellaneous Application No. ST/Misc/60886/2013 for extension of stay in respect of Appeal No.ST/286/2012 also stands disposed of as the appeals itself has been allowed."
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> **[emphasis supplied]**

10. The aforesaid decision in **Semtech Industries** clearly holds that when invoices are issued showing the value of the goods used and the service charges separately, service tax would be chargeable only on the service/ labour charges and the value of goods used for repair would not be includable in the assessable value of the service.

11. It is not in dispute that while raising the invoices, the Appellant had separately shown the cost of the goods and the cost of service. The invoices also shows that VAT had been charged for the sale of spare parts. Thus, if a sale had taken place and it

had been subjected to VAT, no Service Tax could have been levied.

12. Thus, in view of the decision of the Tribunal in **M G Motors** and **Semtech Industries**, it has to be held that the value of spare parts cannot be included in the assessable value for payment of Service Tax.

13. The impugned order, therefore, cannot be sustained. It is, accordingly, set aside and the Appeal is allowed.

(Dictated and pronounced in the open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(BIJAY KUMAR)
MEMBER (TECHNICAL)

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