FAX : 011-26108426

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: **04/11/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/53352/2015-CU[DB]** dated **01/10/2015**

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(CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	ST/Stay/392/2009	ST/119/2009	C.C.E., RAIPUR Central Excise Building, Dhamtari Road, Tikrapara, Raipur 492001.
			Name and Address of Respondent
2			RALAS MOTORS, (AUTHORISED DEALER OF M/S MAHINDRA & MAHINDRA LTD.) RATIBANDH, RAIPUR (C.G.)

Copy To

3Advocate(s) / Consultant(s): **Sh. Rishi Chanan, Advocate**

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi
6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
14 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082
15 C.D.R. **16** Office Copy **17** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI – 110 066.

Date of Hearing 01.10.2015

For Approval &Signature :

Hon'ble Hon'ble Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Appeal No.ST/119/2009-CU[DB]
[Arising out of Order-in-Appeal No.30(ST)/RPR-I/2008, dated 12.11.2008 passed by the C.C.E.(Appeals), Raipur-I]

C.C.E., Raipur — Appellant

Vs.

M/s. Ralas Motors — Respondent

Appearance
Mr. Ranjan Khanna, DR - for the appellant
Mr. Rishi Chanan, Advocate - for the respondent

CORAM: **Hon'ble Justice G. Raghuram, President**
Hon'ble Mr. R.K. Singh, Member (Technical)

Final Order 53352/2015, dated 01.10.2015

Per Mr. R.K. Singh :

The appeal has been filed by Revenue against Order-in-Appeal dated 12.11.2008 which set aside the Order-in-Original dated 17.06.2008 on merit as well as on the ground of time bar. The said Order-in-Original had confirmed the service tax demand of Rs.3,58,199/- for the period July, 2004 to September, 2005 under Business Auxiliary Service (BAS) along with interest and penalties on the ground that the respondent had received Rs.35,84,761/- as sales incentive from Mahindra & Mahindra Ltd. The Commissioner (Appeals) observed that "*on the contrary, the details of incentive scheme enclosed with the Appellant's letter dated 17.02.06 addressed to the Superintendent (Audit), Raipur reveals that the entire component of sales incentive had been passed on to the customers. Since such incentives to the customers are in the nature of promoting sale of cars on which customers pay sales tax, it is my considered view that Service Tax is not leviable on such incentives when sales tax has been paid. This proposition finds support from the decision in the case of M/s. ASL Motors Pvt. Ltd. (supra).*"

2. Revenue in its grounds of appeal has essentially stated that the observations of the Commissioner (Appeals) that the entire sales incentive amount of Rs.35,84,761/- had been passed on to the customers and such incentive was for sale of goods and subjected to levy of sales tax is not based on facts, because the respondent had not added the discount in the value of goods and hence, it was not taxed under sales tax/VAT.

3. Ld. advocate for the respondent cited CESTAT judgement in the case of ASL Motors Pvt. Ltd. Vs. CCEST, Patna [2008 (9) STR 356 (Tri.-Kolkatta)], wherein it was observed that "*mutual exclusivity as per Constitution of India between taxability of sale of goods charged to sales tax by the State and excise duty on manufactured goods and tax on services both levied by the Centre.*"

4. We have considered the contentions of both sides. We find that it is not in dispute that whatever amount was received by the appellant was passed on the customers as incentive. Indeed the Commissioner (Appeals) recorded the fact that the entire component of sales incentive received had been passed on to the customers. Further, the respondent's

appeal was allowed by the Commissioner (Appeals) on the ground of time bar also observing that the facts were in the knowledge of the Department by 05.12.2006. CESTAT in the cases of ***CST, Mumbai-I Vs. Sai Service Station [2014 (35) STR 625 ((Tri. – Mumbai)]*** and ***Pratap Singh & Sons Vs. CCE, Mumbai-I [2007 (5) STR 389 (Tri. – Mumbai)]*** has held that similar activities by ~~other~~ automobile dealers do not amount to rendition of BAS.

5. In the light of the foregoing, we do not find any merit in this appeal and the same is rejected.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

SSK