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: **29/04/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/51429/2015-CU[DB]** dated **27/03/2015**

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/80/2007	**KAMAL AUTO INDS.** Jhalawar Road, Kota
		Name and Address of Respondent
2		-C.C.E. JAIPUR NCRB, Statue Circle, C Scheme, Jaipur

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Copy To

3Advocate(s) / Consultant(s):

Shekhar Vyas
P-13, Sector 12,
Noida,
Uttar Pradesh

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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 C.D.R. **15** Office Copy **16** 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 : 27.3.2015

Appeal No. ST/80/2007-CU(DB)

[Arising out of Order-in-Original No. 118(GRM)ST/JPR-I/2006 dated 26.12.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur]

For Approval & Signature :

Hon'ble Mr. 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?	
2..	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

M/s Kamal Auto Industries — Appellant

Vs.

CCE, Jaipur — Respondent

Appearance:

Shri Shekhar Vyas, Advocate - for the Appellant

Shri R. Tandan, D.R. - for the Respondent

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

F. Order No. 51429/2015

Per **R.K. Singh :**

Appeal has been filed against Order-in-Appeal No.118(GRM)ST/JPR-I/2006 dated 26.12.2006 which upheld the

Order-in-Original dated 19.7.2006 in terms of which service tax demand of Rs.19,243/- (for the period 2002-2003 to 2004-2005 (up to September, 2004) along with interest and penalty was upheld.

2. The appellants are an authorised service station and provided annual maintenance of vehicles under the annual maintenance scheme under which they charged fixed amount towards annual maintenance charges. Under that scheme they collected Rs.548439/= ~~Rs.51,48,439/-~~ but paid service tax only on 50% thereof on the ground that the remaining 50% pertained to oil changes. However, they did not provide any evidence of value of oil and therefore the primary adjudicating authority disallowed the said deduction and as the appellants had suppressed the fact that they were paying service tax only on half of the amount received by them penalties under Sections 76 & 78 were also imposed because during the relevant period, the said two penalties were not mutually exclusive. In the grounds of appeal, the appellants have essentially stated that the lower authorities have seriously erred and that the penalty under Section 76 & 78 of the Finance Act, 194 was imposed without any hearing. They however admitted that they do not have any evidence regarding cost of oil changed during servicing of vehicles.

3. We have considered the appellants' submissions. We find that the primary adjudication order as well as the order in appeal have

been passed after duly hearing the appellants and therefore their contention that they were not heard is factually incorrect. It is not disputed that they have paid service tax only on 50% of the annual maintenance charges recovered by them on the ground that the remaining 50% pertained to value of oil changed during servicing of vehicles. However, they have admitted that they never raised any bills for the oil so changed nor did they have any evidence of the value of such oil and that the entire amount for annual maintenance used to be recovered in lump sum. In this regard, we find that Notification No. 12/2003-ST is worded as under:

> "In exercise of the power conferred by Section 93 of the Finance Act, 1994 (32 to 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts so much of the value of all the taxable services, as is equal to the value of goods and materials sold by the service provider to the recipient of service, from the service tax leviable thereon under Section (66) of the said Act, subject to condition that there is documentary proof specifically indicating the value of the said goods and materials."

It is evident from the wording of the said notification that for claiming exemption there-under, the appellants have to provide documentary evidence specifically indicating the value of oil which admittedly they have not been able to do.

4. Therefore we do not find any infirmity in the impugned order. The appeal is dismissed.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

RM