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: 15/07/2014

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. **ST/A/52771/2014-CU[DB]** dated **26/06/2014**

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/832/2008	**C.C.E. INDORE** Manik Bagh Palace, Post Box No. 10, Indore 452001 (M.P.)
		Name and Address of Respondent
2		**JABALPUR MOTORS LTD.** 263-1-1, A.B.ROAD, BHAMORI, INDORE.

Copy To
3 Advocate(s) / Consultant(s):

Bipin Garg, Adv
B-1/1289-A, Vasant Kunj,
New Delhi-110 070

4 Bar Association, CESTAT, Delhi

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 C.D.R. **14** Office Copy **15** 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/Order : 26.6.2014

Appeal No. ST/832/2008-CU(DB)

[Arising out of Order-in-Appeal No. IND-I/152/2008 dated 22.5.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Indore]

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?	

CCE, Indore — Appellant

Vs.

M/s Jabalpur Motors Ltd. — Respondent

Appearance:

Shri Yashpal Sharma, D.R. - for the Assessee
Ms. Sukriti Das, Advocate - for the Revenue

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

F. Order No. 52771/2014

Per **R.K. Singh :**

This is an appeal filed by the Joint Commissioner, Central Excise & Service Tax, Indore against the Order-in-Appeal No. IND-I/152/2009 dated 11.9.2008 passed in respect of M/s Jabalpur

Motors Ltd. (hereinafter referred to as the Respondents). Vide Orders-In-Original No. 05-07/AC/DEM/ST dated 22.5.2008, demand in respect of three Show Cause Notices was confirmed as under along with penalties under Sections 76, 77 & 78 of Finance Act, 1994.

S.No.	Show Cause Notice No. & Date	Service tax on amount collected from sale of Burnt oil	**Amount of demand involved** Service tax on amount received on account of salary of drivers received from the manufacturer	Service tax on the amount received from the manufacturer on account of free service.
1	2	3	4	5
1.	V(ST)3-35/ASS/06-07/20452 dated 13.7.2006	12640/-	24457/-	17814/-
2.	V(ST)3-44/ASS/06-07/22299 dated 7.9.06	-	14627/-	12103/-
3.	V(ST)3-57/ASS/07-08/5847 dated 21.9.207	-	16646/-	112896/-

Vide the above referred order-in-appeal the Order-in-Original was set aside against which the Revenue is in appeal only in respect of the demands confirmed as per columns 4 & 5 of the table above.

2. Briefly stated, the demand in column 4 is in respect of the amount of salary of drivers of mobile vans used for providing mobile services to the car buyers as this salary amount was reimbursed by M/s Maruti Udyog Ltd. The demand in respect of column 5 of the table above is on account of the amount allegedly received from M/s

Maruti Udyog Ltd. (MUL) towards free services provided to the car purchasers in the form of servicing those cars free. The Revenue contends that service tax is leviable as per Col. 4 & 5 of the table above and the Commissioner (Appeals)' order dropping these two components of the service tax demand needs to be set aside and the Order-in-Original restored in respect of these two components of service tax demand along with penalties relating thereto.

3. The Respondent have contended that M/s MUL have not reimbursed any amount towards providing free services to car buyers as it is their (the Respondents') duty as car dealers to do so and M/s MUL has also confirmed not having made any such reimbursements. Also no service is being provided to M/s MUL for reimbursing the salary of mobile van drivers. They further contended that there has been no wilful mis-statement or suppression of facts.

4. We have considered the facts of the case. 'Authorised Service station is defined as under:

> *"authorised service station" means any service station, or centre, authorised by any motor vehicle manufacturer, to carry out any service, repair, reconditioning or restoration of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer",*

and the related taxable service is defined as "a service rendered to a customer, by an authorised service station, in relation to any service, repair, reconditioning or restoration of motor cars, light motor vehicles or two wheeled motor vehicles in any manner".

5. It is evident from the above definition that the liability to service tax is on account of the said service provided to a customer. The service is provided to the car buyers who are the customers. For the free services, no amount is charged from the customers. As regards the contention that amount towards the free services is reimbursed by Maruti Udyog Ltd., it is seen that Maruti Udyog Ltd. have categorically stated that they do not reimburse any amount towards such free services to the dealers. The Respondents have also stated that providing such free services is part of the functions and duties of dealers who are entitled to the dealership commission. Also the free services are rendered to the car buyers and not to M/s MUL and the car buyers pay nothing therefor. Seen in this light it is evident that the demand of service tax as per column 5 of the table above is mis-conceived. Coming to the demand of service tax on the amount received on account of salary of drivers of vans used for providing mobile service to the car owners shown in column 4 of the table, it is evident that the customer in this case is the car owner who is the recipient of service. M/s MUL receive no service nor are M/s MUL, the Respondents' customers. Thus the Respondents have not

provided the service of authorised service station to them (i.e. M/s MUL). Accordingly this amount cannot be made liable to service tax under the category of authorised service station service.

6. In the light of the foregoing, we find that the appeal filed by the Revenue is not sustainable and is therefore dismissed.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

RM