

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI  
PRINCIPAL BENCH,COURT NO. 1**

**SERVICE TAX APPEAL NO. 50571/2018**

[Arising out of Order-in-Appeal No. 411-414 (SM) ST/JPR/2017 dated 16.11.2017 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur]

**M/s. K P AUTOMOTIVES PVT. LTD.**  
E-198 RIICO Industrial Area Mansarovar  
Jaipur

**Appellant**

Vs.

**COMMISSIONER (APPEALS)  
CENTRAL EXCISE & CGST, JAIPUR**

**Respondent**

**WITH**

**SERVICE TAX APPEAL  
NO. 50572/2018**

**SERVICE TAX APPEAL  
NO. 50573/2018**

**SERVICE TAX APPEAL  
NO. 50574/2018**

Appearance:

Present for the Appellant : Shri Alok Kumar Kothari, Advocate

Present for the Respondent: Shri R Jain, Authorised Representative

**CORAM:**

**HON'BLE Mr.JUSTICE DILIP GUPTA, PRESIDENT**

**HON'BLE Ms.HEMAMBIKA R. PRIYA, MEMBER(TECHNICAL)**

Date of Hearing/ Decision: **07/07/2023**

**FINAL ORDER No. 50945-50948 /2023**

**JUSTICE DILIP GUPTA**

A common issue arises in all four appeals and, therefore, they are being decided together by a common order.

2. The issue involved is as to whether service tax is payable on the amount for the free services provided by the appellant, an authorised dealer and service station of Maruti Udyog Ltd., to the customers during the warranty period for the sale of cars.

3. The Commissioner (Appeals), by a common order dated 15.11.2017, has dismissed the appeals and confirmed the order passed by the Adjudicating Authority confirming the demand of service tax with interest and penalty.

4. Shri Alok Kumar Kothari, learned counsel for the appellant submitted that the issue involved has been decided by a Division Bench of the Tribunal in **Hindustan Auto House (P) Ltd. vs Commissioner of Central Excise, Jaipur<sup>1</sup>**, which decision was subsequently followed by the Tribunal in the case of the appellant in **M/s. K P Automobiles Pvt Ltd. and M/s Rajesh Motors (Raj) Pvt Ltd.<sup>2</sup>** Learned counsel also pointed out that another appeal of the appellant was also decided by the Commissioner (Appeals) in favour of the appellant by Order-in-Appeal No. 172 (SM) /ST/JPR/2021 dated 13.04.2021.

5. Shri Rajesh Jain, learned authorised representative appearing for the department has however, submitted that the decision of the Tribunal in **Hindustan Auto House** was on different grounds and therefore, cannot be applied to the facts of the present case.

6. The submissions advanced by of the learned counsel of the appellant and the learned authorised representative appearing for the department have been considered.

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<sup>1</sup> [2009 (13) STR 190 (Tri-Del)]

<sup>2</sup> Service Tax Appeal No's. 186-187 & 278/2007 decided on 21.11.2008

7. In **Hindustan Auto House**, the Tribunal observed as follows:

"6. We have carefully considered the submissions. The 'free services' said to have been rendered by the appellant to the purchaser of the vehicle is not really free. The value of such services are already included in the price of the vehicle paid by the customers. The value has also been included for the purpose of paying excise duty and sales tax. It is also admitted that when the services are rendered by the appellant to the purchaser of vehicles, no payment or service charges are paid by the said customers. We have not been shown any evidence to show that the vehicle manufacturer has specifically reimbursed amounts for the said free services. The learned Authorised Representative submits that there is no actual reimbursement by Hyundai Motors towards service charges and he relies on the certificate of vehicle manufacturer in this regard. The learned DR is not able to produce any evidence contrary to this. Show cause notice has also gone on the presumption that one of the methods of re-imbursement is to include the said service charges in dealer's margin. In other words, we find that in this case, the service provider has not received any service charge from the service recipient. We have also not been shown that the vehicle manufacturers have specifically reimbursed any amounts towards the said services. In these circumstances, payment of service tax and imposition of penalty under various sections are not sustainable.

7. In view of the above, all the appeals are allowed with consequential relief, if any, as per law."

8. This decision was subsequently followed by the Tribunal in the matter of appellant in **K P Automobiles**<sup>2</sup>. Though an appeal was initially filed by the department to assail the aforesaid order but it was withdrawn on monetary grounds.

9. It was noticed by the Commissioner (Appeals) in the order dated 13.04.2021, while deciding another appeal filed by the appellant to assail the order dated 03.03.2020 passed by the Superintendent, that the demand made in respect of a similar issue was set aside by the Tribunal and the appeal was allowed on 21.11.2008.

10. There is nothing on record to indicate that the aforesaid order dated 13.04.2021 passed by the Commissioner (Appeals) was assailed by the department or has been set aside by the Tribunal.

11. It is not possible to accept the contention advanced by the learned authorised representative as the decision of the Tribunal in **Hindustan Auto House** squarely applies to the facts of the present appeal.

12. In such circumstances, when the issue raised in this appeal has been decided in favour of the appellant, the order dated 16.11.2017 passed by the Commissioner (Appeals), which has given rise to the four appeals, deserves to be set aside and is set aside. All the four appeals are, accordingly, allowed.

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(HEMAMBIKA R. PRIYA)**  
**MEMBER(TECHNICAL)**