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

Appeal No. ST/124 /2007-125 /2007 - CU[DB] Date 24/09/2008
ST/439-440/07

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S HINDUSTAN AUTO HOUSE (P) LTD. (EARLIER
KNOWN A
7, SANSAR CHANDRA ROAD, JAIPUR

M/S HINDUSTAN AUTO HOUSE (P) LTD. (EARLIER
KNOWN A — Appellant

Vs

C.C.E. JAIPUR — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/257-260 2008 CU[BR] dated 04.09.08

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
   C.C.E. JAIPUR
   NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR
2. Adv. / Consult
   MR.BIPIN GARG, ADV
   B-1289-A VASANT KUNJ NEW DELHI - 70

3 S.D.R
4 J.C.D.R.
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15 Office Copy
16 Guard file

M/S HINDUSTAN AUTO HOUSE (P) LTD. (EARLIER KNOWN A
7, SANSAR CHANDRA ROAD, JAIPUR

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, COURT No.I
NEW DELHI

ST/Appeal Nos.124-125/07 & ST/A Nos. 439-440 /07-CU(BR).

(Arising out of order in Appeal No. 105-106/GRM/ST/JPR.I/2006 dated 28.11.2006 passed by the Commissioner (Appeals), Central Excise, Jaipur and No.23 & 21/2007-ST dated 15.5.2006 passed by the Commissioner, Central Excise, Jaipur)

Date of Hearing/Decision: 4.9.2008

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member(Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Hindustan Auto House (P) Ltd — Appellant
(Rep. by Shri Atul Gupta, C.S)

Vs

CCE, Jaipur — Respondent
(Rep. by Shri A.K. Madan, DR)

Coram: **Hon'ble Mr. Justice S.N. Jha, President**
Hon'ble Mr. M. Veeraiyan, Member(Technical)

Final Order No S7/257 to 260/08.

Per M. Veeraiyan:

1.1 Appeal ST Nos 124-125/2007 are against the order of the Commissioner (Appeals) bearing No.105-106/GR /ST/ JPR.I/06 dated 28.11.2006.

1.2. Appeal ST Nos. 439-440/2006 are appeals against the order of the Commissioner bearing No.23 & 21/2007 dated 15.5.2006 by which he imposed penalty under Section 78 of the Finance Act.

1.3 All these appeals are connected and involve common issue and accordingly, are being disposed of by this common order.

2. Heard both sides.

3. The relevant facts of the case, in brief, are as follows:-

a) The appellant is a dealer of motor vehicles manufactured by Hyundai Motors; when the vehicles are sold to the customers through the dealers, the price paid by the customer takes into account not only the cost of vehicle and profit margins but also likely cost towards free services during warranty period.

b) The value of warranty charges is included for the purpose of payment of excise duty and sales-tax.

c) Notices were issued demanding service tax on the value of free services provided by the appellant to the customers during the warranty period. It was alleged that the appellant has already received the warranty labour charges by including the same in the margin for the dealers from M/s Hyundai Motors at the time of purchase of the vehicle and therefore, services are not free; that when a dealer undertakes these services of a vehicle sold by another dealer, the said dealer reimbursed the amounts as fixed by M/s Hyundai Motors. Therefore, it was proposed to demand service tax taking the said value for each of the three services.

d) On the basis of show cause notice, the original authority confirmed the service tax on the appellant alongwith interest. He imposed penalty under Section 75 and 76 of the Act. However, no penalty was imposed under Section 78 of the Finance Act. The Commissioner (Appeals) upheld the order of the Original authority. ~~e)~~ e) The Commissioner in revision proceedings, after issue of notice, imposed penalty under Section 78 as well.

4.1 The learned Authorised Representative of the appellant, submits that they are rendering free services and no service charges are being received from the recipients of service; it is wrongly presumed that they are being reimbursed by M/s Hyundai Motors for the services rendered free to the customers; free services are being rendered out of margins provided to them; cost of free services also get included in the assessable value for the purpose of paying excise duty and sales tax.

4.2 The learned Representative relied on the following judgements:-

CCE, Bombay Vs Eastern Aeromatics (P) Ltd
1999 (107) ELT 208 (Tribunal)

CCE & Cus, Vadodara Vs L.D. Textile Ltd
1999 (114) ELT 1036 (Tribunal)

5. The learned DR refers to the following terms of the agreement between M/s Hyundai Motors and the appellant, "dealer also agrees not to charge customers for any service for which dealer is reimbursed by Hyundai Motors without limitation, repairs concerned under the warranty and other free services" and submits that the manufacturer is reimbursing the appellant for the free

services. Therefore, he submits that service tax has been rightly demanded and penalties have been rightly imposed.

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.

(Order dictated and pronounced in the open Court).

(Justice S.N. JHA)
President

(M. Veeraiyan)
Member(Technical)

MPS*