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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/186 /2007-187 /2007 - CU[DB] Date 01/12/2008
ST/278/2007

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

To :
M/S K.P.AUTOMOTIVES PVT. LTD.

198, RIICO INDUSTRIAL AREA, MANSAROVER,
JAIPUR.

M/S K.P.AUTOMOTIVES PVT. LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/370-72/08 **CU[DB]** dated 21.11.08

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 I

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

2. Adv. / Consult

MR.L.P ASTHANA

R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.

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-15
15 Office Copy
16 Guard file

Assistant Registrar
(Customs Appeal Branch)

17 M/S K.P.AUTOMOTIVES PVT. LTD.
198, RIICO INDUSTRIAL AREA, MANSAROVER, JAIPUR.

18 M/s Rajesh motors (Raj) (P) Ltd
12-13 Sudarshanpura Industrial Area
Jaipur.

19 Sh. Alok Kothari
A-92 Manish Marg, Nemi Nagar
Gandhi park, Vaishali Nagar
Jaipur

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:21.11.2008

Service Tax Appeal Nos.186 to 187 and 278 of 2007

Arising out of the order in appeal No.109-110/GRM/CE/JPR-I/2006 dated 13.12.2006 and No.95/GRM/CE/JPR-I/2006 dated 22.1.2006 passed by the Commissioner(Appeals), Customs & Central Excise, Jaipur.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (judicial)

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 should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No.
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

Appellant		Respondent
M/s K.P.Automobiles Pvt. Ltd. M/s Rajesh Motors (Raj.) Pvt. Ltd.	vs.	C.C.E., Jaipur I

Appearance:

Shri Alok Kotwhari, C.A. for the appellants
Shri Vijai Kumar and Shri L.B. Yadav,, Authorized Departmental Representative (DRs) for the Revenue

Coram : Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

Final Order No. ST/370-372/08

Per P.K. Das:

A common issue is involved in these appeals and therefore, all are being taken up together for disposal.

2. After hearing both sides and on perusal of the record, we find that the issue relates to levy of service tax on free services provided by the appellants during the warranty period for sale of car. It is seen that the appellants are providing services on "authorised service station" of Maruti Udyog Ltd. The issue is already covered by the decision of the Tribunal in the case of M/s Hindustan Auto House (P) Ltd. vs. C.C.E., Jaipur vide Final Order No.ST/257 to 260/08 dated 4.9.08. The relevant portion of the said order is reproduced below:

> *"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."*

3. We find that in the present case also the appellants are authorised service station to the Maruti Udyog Ltd. as already stated above and their activities are

similar as stated in the case of Hindustan Auto House (P) Ltd. (supra). The demand of service tax and penalty on the free services provided by the appellant during the warranty period are set aside.

4. At this stage, the ld. Counsel on behalf of the appellants submits that in Appeal Nos.ST/186-187 of 2007, there is other demand of tax and penalty on "Club Membership", which they are not contesting. Hence, we direct the adjudicating authority to re-determine the demand of tax and penalty in Appeal Nos.ST/186-187 of 2007 on "Club Membership" only.

5. Appeal No.ST/278/07 is allowed with consequential relief.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/