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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/395-96, 612,615-16 & 623/2007 - CU[DB]
ST/47-48/2008

Date 11/12/2008

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

To :
SPEEDWAYS TYRE SERVICE
MALERKOTLA ROAD, KHANNA, PUNJAB

SPEEDWAYS TYRE SERVICE — Appellant
Vs
C.C.E. LUDHIANA — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/414-421/08 **CU[DB]** dated 04.12.08 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. LUDHIANA
   CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR, LUDHIANA 141001 (PUNJAB)
2. Adv. / Consult
   MR.SUDHIR MALHOTRA
   13 R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR
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
17. Sh Balvinder Singh, Partner
    M/s Speed ways Tyre Service
    focal point Moga (Pb)
18. M/S SPEEDWAYS TYRE SERVICE
    MALERKOTLA ROAD, KHANNA.
19. M/s Speed ways Tyre Service
    G.T. Road Transport Nagar Ludhiana

Assistant Registrar
(Customs Appeal Branch)

P.T.O.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

In Service Tax Appeals Nos.395-96 of 2007
& Service Tax Appeals Nos.47-48 of 2008
Service Tax Appeals Nos.612, 615-16 of 2007 and 623 of 2007

[Arising out of Order-in-Appeal No.123-124/CE/Appl/Ldh/2007 dated 19.04.2007 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:04.12.2008

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.

2. Whether it should 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 Departmental authorities? :

In Service Tax Appeals Nos.395-96 of 2007
& Service Tax Appeals Nos.47-48 of 2008

1. Speedways Tyre Service, Khanna
2. Speedways Tyre Service, Transport Nagar, Ludhiana
3. Speedways Tyre Service, Focal Point, Moga
4. Speedways Typre Service, Zira, Dist.Ferozpur ...Appellants

Vs.

CCE, Ludhiana ...Respondent

Service Tax Appeals Nos.612, 615-16 of 2007 and 623 of 2007

CCE, Ludhiana ...Appellant

Vs.

M/s. Speedways Tyre Service & Ors. ...Respondent

M/s. Speedways Tyre Service represented by Shri Sudhir Malhotra, Advocate
Department represented by Shri Vijai Kumar, Departmental Representative

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

Final Order No. 57/414-421/08/Dated:04.12.2008

Per P.K. Das:

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

2. Assessees filed appeals against demand of tax for the period 16.06.2005 to October, 2005. Revenue filed appeals against setting aside of demand of tax for the period 1.7.2003 to 15.06.2005 and penalties by the Commissioner (Appeals).

3. The relevant facts of the case, in brief, are that the assesses are engaged in repairing of used and worn out tyres. The process of repairings, in brief, are that the vulcanizing solution are applied on bald tyre with spray gun and same are allowed to dry for some time. The rubber is than bound on tyre with binding machine. The tyre is thereafter fitted with the rim and placed on the vulcanizing machine wherein compressed Air and Steam are passed to vulcanize the rubber. The tyre after stipulated time are taken out from vulcanize machine and allowed to cool in natural conditions. It is called as re-treading tyre.

4. Service tax was demanded on "repair and maintenance service" introduced on 1.7.2003. Show cause notices were served on the assessees demanding tax and penalties for the period 1.7.2003 to 10.10.2005, ~~and~~

penalties. The Adjudicating Authority confirmed the demand of tax and imposed penalties. The Commissioner (Appeals) modified the Adjudication Order in so far as the demand of tax prior to 16.06.2005 and penalties were dropped.

5. After hearing both the sides and on perusal of the records, we find that the service tax on "maintenance and repair services" was introduced on 1.7.2003, which was amended on 16.06.2005. For the purpose of proper appreciation of the case, the definition of the maintenance or repair service is reproduced below:-

> <u>With effect from 1.7.2003</u>
>
> "Maintenance or Repair" means any service provided by-
>
> (i) any person under a maintenance contract or an agreement; or
> (ii) a manufacturer or any person authorised by him,
> in relation to maintenance or repair or servicing of any goods or equipment, excluding motor vehicles.
>
> <u>As amended on 16.06.2005</u>
>
> "Maintenance or Repair" means any service provided by:-
>
> (i) any person under a contract or an agreement; or
> (ii) a manufacturer or any person authorised by him,
> in relation to
> (a) maintenance or repair including reconditioning Restoration or servicing or any goods or equipment, excluding motor vehicle; or
> (b) maintenance or management of immovable property.

6. On perusal of the above definitions, it is seen that from 16.06.2005, any person is providing any service under a contract for "Maintenance or Repair" liable to pay tax. In the present case, the assessees are repairing

old and used tyres. The Commissioner (Appeals) after examining the evidence namely "Order Form" of the assessees held that it is a repair under a contract. We have perused the backside of "Order Form", wherein "Terms" were mentioned. So, we agree with the finding of the Commissioner (Appeals) that assessees are covered under the category of "Maintenance and Repair" service from 16.06.2005. Therefore, the Commissioner (Appeals) rightly modified the Adjudication Order and upheld the demand of tax from 16.06.2005.

7. Ld. Advocate on behalf of the assessees submits that the material cost should not be included in the taxable value. We do not find any force in the submission of the ld. Advocate. On reading of the provisions under Section 76 of the Finance Act, 1994, we find that the tax will be paid on the gross amount charged by the service provider for such services provided or to be provided by him.

8. In view of the above discussions, we do not find any infirmity in the order of the Commissioner (Appeals). Hence, all the appeals filed by the Revenue and assessees are rejected.

Order dictated & pronounced in open court on 4/12.2008.

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

Ckp.