

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

Appeal No. ST/241 /2007-SM[BR]

Date 25/01/2008

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

To :
M/S TARAN ANGAD TRADERS PVT. LTD.
INDER BHAWAN, MLB ROAD, GWALIOR (M.P.)

M/S TARAN ANGAD TRADERS PVT. LTD.

Appellant

C.C.E. INDORE

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.167/2008-SM[BR] dated 7.12.2007
passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. INDORE

MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

2. Adv. / Consult SHRI. P.A.S. RAO.ADV.

12-D, DDA MIG FLATS SARAI JULLAINA
NEW DELHI-110025

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi


11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file


Assistant Registrar
(SM Appeal Branch)

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

COURT NO.III.

Service Tax Appeal No.241 of 2007-SM (BR)

(Arising out of the Order-in-appeal No.IND-I/375/2006 DATED 20.12.2006
passed by the Commissioner (Appeals), Central Excise, Indore.)

For approval and signature:

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

-
1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the 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?
-

M/s. Taran Angad Traders Pvt. Ltd.

Appellant.

Versus

CCE, Indore

Respondents

Appearance

Shri P.A.S. Rao, Advocate for the appellants.

Shri A.K. Rastogi, Authorised Departmental Representative (DR) for the respondents.

CORAM: Hon'ble Mr. P.K.Das, Member(Judicial)

Date of decision:7.12.2007.

Final order No 167/08-SM/BN

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants are registered for payment of Service Tax as an "Authorized Service Station". They are also engaged in the business of selling vehicles from their showroom as a dealer of M/s. Hero Honda Motor Ltd. The appellants paid the service tax on GTA service for receiving the two wheelers from M/s. Hero Honda Ltd., which they utilized for service of "Authorised Service Station". They have also availed the credit on insurance service, telephone service. The adjudicating authority disallowed the credit of Rs.30,790/- along with interest and imposed penalty of Rs.2,000/- upon the appellant, which they have taken credit on GTA service. The Commissioner (Appeals) upheld the adjudication order.

2. The Id. Advocate on behalf of the appellant submits that the Commissioner (Appeals) denied the credit on GTA service on the ground that the receipt of vehicles from M/s. Hero Honda Ltd. has no nexus with authorized service station. He placed the dealership agreement between the appellants and M/s. Hero Honda Motors Ltd. Article-V (Dealer's Obligations) of the said agreement indicates that the dealer shall vigorously promote, develop and maintain sales of Products and Parts to the satisfaction

of and in the manner required by Hero Honda. He submits that the appellants are rendering aftersale service of the two wheelers in the authorized service station and therefore, the findings of the Commissioner (Appeals) is erroneous. Regarding the denial of credit on insurance service, telephone service, the Id. Advocate submits that these are activities relating to business and covered under Rule 2 (1) of Cenvat Credit Rules, 2004.

3. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that the appellants did not produce any evidence that there is a nexus between the service station and the service of two wheelers received by them. Therefore, the Commissioner (Appeals) rightly upheld the adjudication order.

4. After hearing both the sides and on perusal of the records, I find that the Commissioner (Appeals) upheld the adjudication order on the ground that there is no nexus between the service station providing service to vehicles and the receipt of vehicles from M/s. Hero Honda Motors Ltd. as a dealer for sales. The Id. Advocate submits that they pleaded before the authorities below that the appellants are undertaking after-sales service in the authorized service station. The dealership agreement is also supporting the contention of the Id. Advocate. Hence, the matter is required to be examined by the lower appellate authority with the dealers' agreement with

the appellants. Regarding the denial of credit on telephone service and insurance service, it is seen that Rule 2 (1) of Cenvat Credit Rules, 2004, 'input service' includes activities relating to business. Therefore, it is also required to be examined as to whether these services are related to the activities of business. So, the impugned orders are set aside and the matter is remanded back to the adjudicating authority to examine the dealer's agreement and various provisions of law as contended by the appellants. Needless to say that the adjudicating authority shall provide hearing before deciding the matters. The appeal is allowed by way of remand,

Order dictated & pronounced in open Court on 7.12.2007.

(P.K. Das)
Member (Judicial)

Ckp.