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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/76 /2007 - CU[DB] Date 12/01/2009

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

To :
M/S KAMAL & COMPANY
TONK ROAD, JAIPUR

M/S KAMAL & COMPANY Appellant
Vs
C.C.E. JAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/10 2009 CU[DB]** dated 05.01.09 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
   N.C.R. BUILDING, STATUE CIRCLE, C SCHEME, JAIPUR
2. Adv. / Consult : Mr. S.Vyas, Adv
   P-13 Sector – 12, Noida - 01
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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI
COURT – III

SERVICE TAX APPEAL NO. 76 OF 2007

[Arising out of Order-in-Appeal No. 117(GRM)/ST/JPR-I/2006 dated 21.12.2006 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 Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would 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?	Yes

M/s. Kamal & Company — Appellant

Vs.

CCE, Jaipur — Respondent

Appearance:

Shri Shekhar Vyas, Advocate for the appellant;
Shri Sunil Kumar, Departmental Representative, for the Revenue,

Coram:

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

Date of Hearing/decision: 5th January, 2009

FINAL ORDER NO. 57/10/09 dated ________

Per P.K. DAS:

Heard both sides and perused the records.

2. The relevant facts, in brief, are that the appellants are engaged in providing service of authorized service station. The appellants provided ~~3~~ free services to the customers during the warranty period of sale of car as per direction of M/s. Tata Motors Ltd. We find that the issue involved in this case has already been decided by the Tribunal in favour of the assessee in the case of Hindustan Auto House (P) Ltd. vs. CCE, Jaipur, reported in 2008 (89) RLT 541 (CESTAT-Del.) and also in the case of K.P. Automobiles Pvt. Ltd. vs. CCE, Jaipur, Final Order No. ST/370-72/08 dated 21.11.08. The relevant portion of the order of the Tribunal in the case of Hindustan Auto House (P) Ltd. (supra) is reproduced below:-

"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 the 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. In view of the above decision, we do not find any reason to sustain the demand of tax. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK