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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/54 /2009 – SM[BR] Date 08/09/2009

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

To :
M/S M.G.MOTORS,

TIJARA ROAD, ALWAR.(RAJASTHAN)

M/S M.G.MOTORS, Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1131 / 2009 –SM[BR] dated 13.7.2009 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. JAIPUR I

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

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI

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3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
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Assistant Registrar
(SM Appeal Branch)

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

Service Tax Appeal No.54 of 2009-SM (BR)

[Arising out of Order-in-Appeal No.110(DK)ST/JPR-I/2008 dated 22.10.2008 passed by the Commissioner of Central Excise (Appeals), Jaipur]

Date of Hearing/ Decision: 13.07.2009

For approval and signature:

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

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? : Yes

M/s. M.G. Motors ...Appellants
(Rep. by Shri Atul Gupta, Chartered Accountant)

Vs.

CCE, Jaipur-I ....Respondent
(Rep. by Shri S.K. Bhaskar, SDR)

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

Final Order No.1131/2009 SM (BR)/Dated:13.07.2009

Per P.K. Das:

The appellants filed this appeal against imposition of penalties.

2. The relevant facts of the case, in brief, are that the appellants are an authorised dealer of Maruti Udyog Ltd. They were receiving

commission from M/s. Maruti Udyog Ltd. for arranging loan to the customers. During the course of survey, it was noticed that the dealers of the Maruti Udyog Limited were getting commission for providing bank loans through Maruti Finance. Accordingly, by letter dated 14.09.2006, the Superintendent of Central Excise requested the appellants to deposit the tax. The appellant by their letter dated 18.09.2006 informed that M/s. Maruti Udyog Ltd advised them to deposit the tax on the commission. Accordingly, they deposited the entire amount of tax of Rs.5,02,443/- along with interest of Rs.63,735/- vide TR-6 Challan dated 16.09.2006. The Original Authority confirmed the demand of tax and appropriated the amount of tax as deposited by them along with interest. He also imposed penalties under Section 75A, 76 and 78 of Finance Act, 1994. The Commissioner (Appeals) upheld the adjudication order.

3. Ld. Counsel on behalf of the appellant submits that there was a doubt regarding levy of tax on such services. The Central Board of Excise & Customs vide Circular No.87/05/2006-S.T., dated 6.11.2006 clarified that the tax is leviable on such service. He also submits that on the identical situation, the Tribunal set aside the penalties in the following decisions:-

(a) Modern Machinery Store Vs. CCE, Jaipur-I
2008 (12) STR 162 (Tribunal-Delhi).

(b) Raj Auto Centre Vs. CCE, Ahmedabad-II
2009 (14) S.T.R. 327 (Tribunal-Ahmd.)

(c) Vipul Motors (P) Ltd. Vs. CCE, Jaipur-I
2008 (9) STR 220 (Tribunal-Delhi).

4. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that the appellants deposited the duty after detection by the Central Excise Officers and, therefore, imposition of penalties are justified. He also submits that the tax was levied in July, 2003 and they deposited the tax in September, 2006 after detection by the Central Excise Officers. Thus, the imposition of penalty under various Sections of the Act is warranted.

5 After hearing both the sides and on perusal of the records, it is seen from the Board's Circular dated 6.11.2006 that certain doubts had arisen in respect of levy of tax on activities by authorised Motor Vehicle Dealers and service station. One of the issues before the Board was as under:-

> " Whether the commission received by the automobile dealers from Banks/Non Banking Financial Companies (NBFC), for introducing the customers seeking finances/loans to such banks/NBFCs is to be subjected to service tax ? Further, in case part of these incentives are passed on by the dealers to the customers, whether tax would be leviable only on that part of incentive, which is retained by the dealers or whether it would be on full amount?

6. Board has clarified the doubts that tax is leviable on such activities. It is seen that the appellants deposited the tax as soon as it came to their knowledge. The Tribunal is consistently taking a view that as confusion

was prevailing during the material period, over leviability of the Service Tax on the impugned activities, penalty is not warranted.

7. I find that the appellants are not contesting the payment of tax along with interest, which they have already deposited long before issue of show cause notice. In view of that, penalties are not sustainable. Accordingly, penalties are set aside. The appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 13.07.2009.

(P.K. Das)
Member (Judicial)

Ckp.