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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/880 /2010 – SM[BR]** Date **07/09/2011**

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH Appellant

Vs

M/S SWARAJ MAZDA LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 571/2011-SM[BR]** dated 19.7.2011 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
M/S SWARAJ MAZDA LTD.
VILL. ARSON,
DISTT. NAWANSHAHAR.

2. Adv. / Consult SHRI V.LAKSHMIKUMARIAN ADV.
B-6/10, SAFDARJUNG ENCLAVE NEW DELHI

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

SINGLE MEMBER BENCH
Court-IV
Service Tax Appeal No.880 of 2010-SM

Date of Hearing/Decision: 19.07.2011

(Arsing out of Order-in-Appeal No.55/CE/Chd-III/09 dated 17.12.09 passed by the CCE(A), Chandirgarh-II)

For approval and signature:

Hon'ble Mr.Ashok Jindal, 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?	

CCE, Chandigarh-II   Appellant

Vs.

M/s.Swaraj Mazda Ltd.   Respondent

Present for the Appellant: Shri Fateh Singh, SDR
Present for the Respondent: Shri Hemant Bajaj, Advocate

Coram: Hon'ble Mr.Ashok Jindal, Member (Judicial)

Final **ORDER NO.** 571/2011 SM (Br)

PER: ASHOK JINDAL

The Revenue has filed this appeal against the impugned order wherein the Commissioner (Appeals) has allowed the availment of credit for payment of service tax on intellectual property services.

2. The contention of the Revenue is that it is to be paid in cash and not through cenvat credit account.

3. On the other hand, learned Advocate for the respondents submitted that the period of dispute in this case is January, 2006. The service tax paid by them for the intellectual property services on 31.1.2006 i.e. prior to 18.4.2006 and in the case of CCE, Chandigarh vs. Nahar Industrial Enterprises Ltd. reported in 2007 (104) RLTONLINE 3 (P & H), the Hon'ble Punjab and Haryana High Court held that a person who is liable to pay tax on goods GTA services in terms of Section 68(2) of Finance Act, 1994 and is not actual service provider, can utilize credit for payment of tax on such service,. Therefore, the issue stands settled in favour of the assessee, the credit can be utilized for payment of service tax is not required to pay through PLA. The appeal is to be dismissed.

4. Considering the decision of the Hon'ble Punjab & Haryana High Court in the case of Nahar Industrial Enterprises Ltd. (supra), I do not find any merit in the Revenue's appeal. Therefore, as held by the Commissioner (Appeals) that the respondent has rightly availed the credit for payment of service tax and is not required to pay service tax through PLA is the correct view. Therefore, the order of the Commissioner (Appeals) is upheld and the appeal filed by the Revenue is dismissed.

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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