14

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. ST/439 /2008 - CU[DB] Date **23/09/2011**

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

To :
M/S AMITDEEP MOTORS
26, SULEMSARAI,ALLAHABAD.

M/S AMITDEEP MOTORS Appellant

Vs

C.C.E ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/485/ 2011 CU[DB]** dated 19.09.2011 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 ALLAHABAD
38,M.G.MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult
MR.S.P. OJHA
299, BAGHAMBARI HOUSING SCHEME,
ALLAHPUR, ALLAHABAD, (UP)

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
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 - 110005
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
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 439 of 2008

[Arising out of Order-in-Appeal No. 20/ST/Alld/2008 dated 9.4.2008 passed by the Commissioner of Customs & Central Excise (Appeals) Allahabad]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

---

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 should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3. Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

---

M/s. Amitdeep Motors — Appellants

Vs.

Commissioner of Central Excise Allahabad — Respondent

Appearance:

Shri S.P. Ojha, Consultant for the Appellants
Shri Nagesh Pathak, DR for the Respondents

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar , Member (Technical)

Date of Hearing/decision : 13.09.2011

Final **ORAL ORDER NO.** ST/485/11

Per Archana Wadhwa (for the Bench):

After hearing both sides, we find that the appellant is an authorised dealer of M/s. Maruti Udyog Ltd. and is an authorised service station. During the course of their business, they also sell and purchase the various accessories of motor vehicles sold by them. The bills for the said accessories are being raised by them showing total gross value received from their customers and sales tax is being paid by them on the motor vehicle's gross value.

2. Revenue's contention is that since they are also fixing the accessories in the motor vehicles, such fixing is to be treated as providing services under the category of 'authorised service station'. As such, taking 2% of the total value charged by them, demand stands confirmed against the appellant under the said category.

3. It is the contention of the learned advocate that they are selling accessories to their customers and fixing the same is an incidental to such sale. The total consideration received from the customers is required to be considered as sale proceeds of the vehicle and the accessories and their being no bifurcation for fixing the accessories, reflected in the invoice, no such deemed bifurcation can be made and service tax confirmed against them. He also clarifies that they have paid the sales tax on the entire gross value so received in which case service tax cannot be confirmed for the above proposition. He relies upon the Tribunal's judgment in the case of Idea Mobile Communications Ltd. vs. CCE,

vs. CCE, Trivandrum reported as [2006 (4) STR 132 (Tri-Bang)] wherein by considering the Hon'ble Supreme Court's judgment in the case of Gujarat Ambuja Cement Ltd. vs. UOI reported as [2005 (182) ELT 33 (SC)], it was held that where the appellants had discharged the sales tax liability on entire consideration, no Service Tax can be confirmed.

4. The contention of the DR appearing for the Revenue is that sales tax is being State subject and Service tax being Centre subject, both are mutually exclusive. Merely because sales tax has been paid on gross value by itself does not mean that no service has been to be paid by the appellant. Further, he submits that amount of tax has been paid confirmed by taking 2% of the gross value though he fairly agrees that no such separate amount was reflected in the invoices.

5. Considering the submissions made by both sides, we find that the issue is covered by the Tribunal's decision in the case of Idea Mobile Communication Ltd. which in turn is based upon ratio of law declared by the Supreme Court in the case of Gujarat Ambuja Cements Ltd.

6. For better appreciation, we reproduce para 4,5 and 6 of the said judgment as under:

> 4. Learned Counsel in counter submitted that they are not challenging the levy of sales tax and conceded that the item sold by them are goods and once sales tax have been levied, there cannot be levy of service tax as there is mutual exclusivity in terms of Apex Court in the case of Gujarat Ambuja Cements Ltd. v. UOI [2006 (3) S.T.R. 608 (S.C.) = 2005 (182) E.L.T. 33 (S.C.)

= 2005 (4) SCC (214, 228)] which has been quoted in the case of BSNL v. UOI (supra). The quoted para is as follows :

> "This mutual exclusivity which has been reflected in Article 246 (1) means that taxing entries must be construed so as to maintain exclusivity. Although generally speaking, a liberal interpretation must be given to taxing entries. This would not bring within its purview a tax on subject-matter which a fair reading of the entry does not cover. If in substance the statute is not referable to a field given to the State, by any principle of interpretation allow a statute not covered by it to intrude upon this field."

5. The learned Counsel submits that sales tax being State subject, therefore, the centre cannot claim Service Tax on that item.

6. On a careful consideration, we notice that the assessee is not contesting the levy of sales tax. They have already paid the sales tax. It follows that service tax is not leviable on the item on which sales tax has been collected. In terms of the Apex Court judgment and the paragraph quoted (supra) the appellants contention is required to be accepted. In terms of the Apex Court judgment, the levy of service tax is not sustainable. The appeal is allowed with consequential relief, if any."

7. Applying the ratio of the above decision of the Idea Mobile, we find that the issue stands decided and there being no dispute that the appellant company having already paid sales tax on the entire gross value, we are of the view that confirmation of service tax or imposition of penalty upon them is not

sustainable. Accordingly, we set aside the impugned order and allow the appeal with consequential relief to the appellants.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

ss