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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/1537/2010 - CU[DB]
ST/S/3258/10

Date **14/07/2011**

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

To :
M/S AMAUSI MOTORS,

SHANTINAGAR, KANPUR ROAD LUCKNOW.

M/S AMAUSI MOTORS, Appellant

Vs

C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/278/ 2011 CU[DB]** dated 04.07.11

passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Alongwith Stay Order No ST/395/2011

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult
MR.VINEET KUMAR SINGH,A.C.A
5 NARAIN NAGAR, SECTOR 11,
INDIRA NAGAR, LUCKNOW.

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 (Harvana)
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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram,
New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III
ST Stay No.3258/10 in
Service Tax Appeal No. 1537 of 2010 (DB)

Amousi Motors — Appellant

Versus

CCE, Lucknow — Respondent

Appearance
Shri V.K.Singh, C.A. - for the appellant.
Shri K.K.Jaiswal, DR – for the respondent.

CORAM : **Hon'ble Shri S.S.Kang, Vice President**
Hon'ble Shri Mathew John, Member (Technical)

DATE OF HEARING / DEICISION : 04/07/2011.

Final Order No. ST/278/11 Dated : 4.7.11
Stay order No. ST/395/11

Per S.S.Kang:

Heard both sides. Applicant filed this appeal for the waiver of amount of service tax of Rs.28,836/- and penalty. The demand is confirmed on account that the applicant is running an authorised service station.

2. The contention of the applicant is that as per the definition of authorised service station, only service, repair, reconditioning of motor car, light motor vehicles or two wheelers are covered. The three wheelers regarding which the applicant are providing after sales service, is not covered ~~does not cover~~ under the definition of light motor vehicle as per ~~the provided~~ section 65(62) of Motor Vehicle Act. As the light

motor vehicle means any motor vehicle constructed or adapted to carry more than six passengers but not more than 12 passengers. The contention is that applicant is not covered under the scope of "authorised service station".

3. Revenue submitted that the Commissioner(Appeals) directed the applicant to deposit 50% of the amount for hearing of the appeal and applicant failed to do so and the appeal was dismissed without going into the merits of the case. The applicant is provider of taxable service hence liable to service tax.

4. In this case, total demand is only Rs.28,836/-. Prima facie, the applicant is not covered under the definition of the light motor vehicle as per the Motor Vehicle Act

5. In view of this, pre-deposit of service tax and penalties are waived during the pendency of the appeal. Stay Petition is allowed. We find that the Commissioner(Appeals) has not cleared the appeal on merits, therefore, as we find that, it is the fit case ~~of~~ for waiver of service tax and penalty. The impugned order is set aside and the matter is remanded to the Commissioner(Appeals) to decide the appeal on merit, without insisting upon any pre-deposit, in accordance with law. The appeal is allowed by way of remand.

(Order dictated in the open court.)

(S.S.Kang)
Vice President)

(Mathew ~~John~~)
Member (Technical)

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