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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/669 /2007 - CU[DB]   Date **23/02/2011**

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

To :
M/S R.K.B.K.AUTOMOBILES (P) LTD.
SAHADAT GANJ, LUCKNOW ROAD, FAIZABAD, U.P

M/S R.K.B.K.AUTOMOBILES (P) LTD. Appellant

Vs

C.C.E ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/43/ 2011 CU[DB]** dated 21.02.11 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
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. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. 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.

COURT NO. IV

Date of Hearing : 17.2.2011

Service Tax Appeal No. 669 of 2007

[Arising out of the Order-in-Appeal No. 32/ST/Alld./2007 dated 28.6.2007 passed by The Commissioner of Customs, Central Excise & Service Tax, Allahabad]

For Approval and signature :

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Mathew John, 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?	:	Yes
2.	Whether it would 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?	:	No
4.	Whether order is to be circulated to the Department Authorities?	:	No.

M/s R.K.B.K. Automobiles (P) Ltd. Appellant

Vs.

CCE, Allahabad Respondent

Appearance :

Appeared for Appellant : Shri K.K. Srivastava, Advocate
Appeared for Respondent : Shri Fateh Singh, DR

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

Final Order No. ST/43/11 dated 21.2.11

Per Ashok Jindal:

The appellants have filed this appeal against the impugned order which is not a speaking order on the issue ~~in~~ that ~~case~~ one renders service to oneself, there is no question of liability of Service Tax.

2. The brief facts of the case are that the appellant is an authorised service station of Maruti vehicles carrying on service and maintenance work of vehicles manufactured by Maruti Udyog Ltd. Apart from this activity, the appellant is also engaged in an another activity wherein the old cars are purchased from open market and after reconditioning and repairing in their own workshop, the same were sold to the customers. The appellants are not disputing the Service Tax liability on service and maintenance work of the vehicles, which are manufactured by Maruti Udyog Ltd. But the appellant is disputing the imposition of Service Tax on reconditioning and repairing of old vehicles which were owned by the appellant themselves and same were sold to the customer on payment of Sales Tax.

3. The ld. Advocate for the appellant submitted that they have contested this issue before the lower appellate authority and submitted that in case if one renders service to oneself whether Service Tax is payable or not. In support of this contention, he relied on the decision of this Tribunal in the case of **Precot Mills Ltd. Vs. CCE** reported in [2006] 5 STT 35 (Bang.-CESTAT) wherein the issue was decided in favour of the assessee. He further submitted that without commenting on this issue, the lower appellate authority has remanded the matter to the adjudicating authority to decide some other issues. Hence, the matter be remanded to the Commissioner (Appeals) to first decide the issue

whether the appellants are liable to pay Service Tax in case they render the service to themselves or not.

4. Heard and considered.

5. We have gone through the impugned order and submissions made by ld. Advocate and found that as the appellant has relied on the decision of **Precot Mills Ltd.** (supra) and without considering the submissions made by the ld. Advocate on the issue that in case one render service to oneself, whether Service Tax is payable or not. The same issue ~~has~~ was neither considered nor decided by the lower appellate authority. Hence we are in agreement that contention of the ld. Advocate in the matter needs further examination by lower appellate authority. In view of the above discussion, we set aside the order to an extent that ~~to decide~~ the issue whether in case one render service to oneself Service Tax is leviable or not is to be decided. Hence the appeal is allowed by way of remand to the lower appellate authority to decide the issue in case of one render service to oneself, service tax is leviable or not. The appeal is allowed by way of remand.

(Pronounced in Court)

(Ashok Jindal)
Member (Judiical)

(Mathew John)
Member (Technical)

RM