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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

EXCISE APPEAL BRANCH

Date 25/05/2011

Appeal No. E/2719 & 2764/2005 - EX[DB]

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

To :
M/S TATA MOTORS LTD.
CHINHAT INDUSTRIAL AREA DEVA ROAD
LUCKNOW

M/S TATA MOTORS LTD. Appellant
Vs
C.C. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No.436-437/ 2011 EX[DB]** dated 18-5-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C. LUCKNOW
5TH AND 11TH FLOOR,
KENDRIYA BHAWAN, SECTOR -
H, ALIGANH, LUCKNOW 226024.

2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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
(EX. APPEAL BRANCH)

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

DIVISION BENCH

Excise Appeal No.2719 of 2005
Excise Appeal No.2764 of 2005

(Arising out of Order-in-Appeal No.263-CE/2005 dated 11.5.2005 and No.268-CE//2005 dated 17.5.2005 passed by the CCE (A), Lucknow)

Date of Hearing: 05.05.2011
Date of Decision: 05.05.2011

M/s.Tata Motors Ltd. Appellant

Vs.

CCE, Lucknow Respondent

Present for the Appellant: Shri Ravi Raghavan, Advocate
Present for the Respondent: Shri Sunil Kumar, SDR

Coram: Hon'ble Mr. D.N.Panda, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

FINAL **ORDER NO.** 436-437/2011-Ex

PER: D.N.PANDA

Excise Appeal No.2719 of 2005

The appellant's grievance is that the vehicle cleared in terms serial No.208 read with condition No.51 of Notification No.6/2002-CE dated 1.3.2002 as per chart produced before the learned appellate authority appearing at page 5 of the appeal folder although were registered by the registering authority within the extended period permitted by condition No.51 of Notification No. 6/2002-CE dated 1.3.2002 refund of duty was denied for which, the dispute arises.

2. Learned Counsel appearing on behalf of appellant explains that in so far as vehicles mentioned at serial No.4 of the chart is concerned, that was registered by the RTA as taxi on 1.9.2003. Similarly, the vehicle at serial No.5 cleared as taxi on 31.07.2003 was registered by the registering authority on 27.10.2003. According to him, the notification granting refund of duty intended that a vehicle is to be registered as taxi within three months of its clearance or with permission of authorities that may be registered within further three months period thereafter. Permission by Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise is necessary for registration during extended period. It is not mandatory that the permission may be availed prior to expiry of three months when the terms of notification is read according to the spirit of the judgement of Hon'ble High Court of Bombay in the case of Mahindra & Mahindra Ltd. vs. CCE, Mumbai reported in 2008 (228) ELT 187 (Bom.) He places reliance on para 7 of the judgement to submit that although further three months period appearing in the earlier notification was subject matter of dispute before Hon'ble High Court of Bombay that makes no difference to the subsequent notification under consideration in the present appeal. Therefore, the judgement clearly throws light that the certificate to be produced for refund may be beyond three months period, while substantial requirement was registration within three months or within further extended period of three months thereafter.

3. On the other hand, learned DR appearing on behalf of Revenue submits that fact relating to registration is subject to verification by the authorities below to grant refund since grant of refund is not an empty formality because claimant has to fulfil terms of the notification. The condition for availing benefit should be satisfied since conditions of the notification are not mere procedure but substantial. He relies on the Apex Court's judgement in the case of Eagle Flask Industries Ltd. Vs. CCE, Pune reported in 2004 (171) ELT 296 (SC).

4. Heard both sides and perused the records.

5. We find that except prescribing further period of three months for registration the Notification does not alter the relief intended to be granted by condition No.51 of the notification in question. Reading of condition No.51 (2) throws light that the condition of prescription of periodicity is in relation to registration but not for production of certificate of registration within three months. Applying the ratio of Hon'ble High Court of Bombay, it can be said that if registration of the taxi is made within the extended period of further three months, the appellant may not be denied of the refund envisaged by notification unless otherwise barred by law. The appellant is therefore required to lead evidence before the lower authorities to satisfy date of registration to claim refund in question and the Authority has to satisfy genuineness and authenticity of the claim. Once satisfied, about registration by the date as has been averred by the Learned Counsel there may not be difficulty to grant refund subject to satisfaction of genuineness and

verification of documents stated above. With these observations, we allow the appeal of the appellant in the manner indicated above.

Appeal No.E/2764/05

6. Learned Counsel submits that appeal No.E/2764/05 appearing at serial No.35 of the cause list today is of the similar nature as that of appeal decided in Appeal No.E/2719/05 as aforesaid. We order the same as has been ordered aforesaid. The Authority subject to verification of the documents shall pass appropriate order.

7. This appeal is also allowed in the manner as indicated above.

(D.N.PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

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