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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

Appeal No. E/2069/2011 - EX[DB] Date **05/03/2012**

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

To :
M/S LIFELONG INDIA PVT LTD
PLOT NO 76, INDUSTRIAL AREA,
DHARUHERA(HARYANA)

M/S LIFELONG INDIA PVT LTD Appellant

Vs

C.C.E. DELHI III Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/243/ 2012 EX[DB]** dated 01-03-12 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.E. DELHI III
UDYOG MINAR, UDYOG VIHAR,
VANIJYA NIKUNJ, PHASE V,
GURGAON - 122016 (HARYANA)

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-3
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
(Excise Appeal Branch)

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

Appeal No.E/2069/11

Date of Hearing/Decision: 16.02.2012

M/s. Lifelong India Pvt. Ltd. — Appellants

Vs

CCE, Delhi-III — Respondent

Present for the Appellant: Shri B.L.Narsimhan, Advocate
Present for the Respondent: Shri S.K.Panda, JCDR

Coram: Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

FINAL **ORDER NO.** A/243/2012-EX (BR)

PER: MATHEW JOHN

The demand of duty of Rs.4,06,412/- stands confirmed against the applicant/appellant along with imposition of penalty of identical amount by including the quantum of sales tax collected by them from their customers but not paid to sales tax department.

2. After hearing both sides, we find that the sales tax was being collected by the appellant from their buyers of the goods. The invoiced issued by them indicated the entire amount of sales tax. However, as consequence of benefit conferred under Haryana General Sales Tax Act, 1973, the appellants were not required to deposit 50% of the amount of sales tax so collected. The Revenue entertained the view that such 50% of the sales tax retained by the appellant, is required to be added in the assessable value of the

goods. Accordingly proceedings were initiated which culminated into impugned order passed by the lower authorities.

3. After hearing both sides, we find that the issue is fully covered by the Tribunal's decision in the case of Maruti Udyog Ltd. vs. CCE, Delhi-III-2004 (166) ELT 360 (Tri.-Del.). By considering the provisions of Haryana General Sales Tax Act, 1973, the Tribunal has observed that 50% of Sales Tax amount retained by way of adjustment between the assessee and the State Government towards release of capital subsidy by State Government and this adjustment does not change the nature of the amount as Sales Tax payable. We find that the said decision of the Tribunal fully covers the issue involved in the present case.

4. Learned AR appearing for Revenue has drawn our attention to the fact that an appeal filed by the Revenue against the decision in the case of Maruti Udyog (Supra) has been admitted by the Hon Supreme Court as reported at 2004 (172) E.L.T. A137 (S.C.).

5. The Ld AR points out another decision of the Tribunal in the case of Andhra Oxygen Pvt. Ltd. vs. CCE, Visakhapatnam-2003 (156) ELT 283 (Tri.-Kolkata) where in it was held that the sales tax collected from the buyers but not paid to the sales tax department is liable to be included in the assessable value. We find that the facts in the said decision are different. There was total exemption from payment of sales tax in terms of Andhra Pradesh General Sales Tax Act, 1957. In the circumstances, the Tribunal observed that the sales tax collected which was otherwise exempted, is liable to excise duty. However, in the present matter, we find that the scheme

operates differently. The Sales Tax is deemed to be paid to the Sales Tax authority but adjusted against subsidy to be paid by the State to the appellant. So the sales tax collected is to be considered as sales tax payable within the meaning of transaction value as defined in section 4 of Central Excise Act. This issue is already decided by the Tribunal and we do not see any reason to take a view different from the earlier decision.

6. This we find that the issue is covered by the decision in Maruti Udyog Ltd. vs. CCE, Delhi-III-2004 (166) ELT 360 (Tri.-Del.). We accordingly allow the appeal.

(Pronounced on the open court on 02/03/12)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

H.P.S.

(MATHEW JOHN)
MEMBER (TECHNICAL)