REGISTERED / AD

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

Mail : cestat08@gmail.com

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
EXCISE APPEAL BRANCH

Appeal No. : E/565/2005-EX[DB]

Dated: **22/10/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
C.C.E. CHANDIGARH
C.R. Building, Plot No. 19, Sector 17-C,
Chandigarh 160017

C.C.E. CHANDIGARH (Appellant)

VS

PUNJAB TRACTORS (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/1235/2012-EX[DB]** dated **16/10/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. **Respondent**
PUNJAB TRACTORS
Phase-IV, Industrial Area, Mohali

2. **Advocate(s) / Consultant(s):** SHRI MADHAV RAO, ADV., C/O. RESPONDENT.

3. C.D.R
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

13. Office Copy

14. Gaurd File

Assistant Registrar
EXCISE 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. I

DATE OF HEARING/DECISION : 16/10/2012.

Excise Appeal No. 565 of 2005

[Arising out of the Order-in-Appeal No. 724/CE/CHD/2004 dated 23/11/2004 passed by The Commissioner (Appeals), Central Excise, Chandigarh.]

Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri 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?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

CCE, Chandigarh — Appellant

Versus

M/s Punjab Tractors Ltd. — Respondent

Appearance

Shri Sanjay Jain, Authorized Representative (DR) – for the Appellant.

Shri A.R. Madhav Rao, Advocate – for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Oral Order No. A/1235/12-Bx(BL)

Shri Justice Ajit Bharihoke :-

This appeal is directed against the order of the Commissioner (Appeals) dated 23rd of November, 2004, whereby the Commissioner (Appeals) disallowed the appeal filed by the department against order-in-original passed by Additional Commissioner (P&V) dropping the demand raised vide show cause notice dated 6th of February 2004.

2. The issue involved in this appeal is whether or not [free after sale service] provided by the dealer to the customer would be includable in the transaction value as additional consideration to the manufacturer from the dealer.

3. At the outset, Shri Madhav Rao, Advocate appearing for the respondent has referred to judgment of Hon'ble High Court of Bombay in writ-petition No. 2744/2012 titled **M/s Tata Motors Ltd. vs. Union of India and others** dated 7th September 2012 and submitted that the issue involved in this case is no more res-integra as it has been finally settled by the Hon'ble Bombay High Court in the above referred case.

4. On perusal of the above and cited judgment, we find that Hon'ble High Court after considering various provisions of Central Excise Act, as also the Board Circulars issued, has concluded that PDI and free after sale services charges are not includable in the transaction value and these charges can be included in the transaction value only when they are charged by the assessee to

the buyer. Relevant observations of Hon'ble Bombay High Court are reproduced thus :-

> "42. We have considered the provisions of Section 4 (1)(a) as amended as well as the provisions of Section 4 as they stood prior to the amendment which came into effect from 1st July, 2000. We are in agreement with the submission advanced by learned Senior Counsel Mr. Sridharan that the provisions of Section 4 as amended are not materially different from the provisions of Section 4 as were prevailing prior to 1st July, 2000. By the amendment, a new term has been introduced by name "transaction value" and the said term transaction value has been specifically defined in Section 4(3)(d) of the said Act. The present Section 4(1)(a) r/w definition of term transaction value gives more clarity and all doubts as to how the assessable value is to be arrived at are removed. It is also noted that the various items incorporated in the term transaction value as defined in Section 4(3)(d) of said Act as forming part of value of Excisable goods are in fact the expenses / deductions specifically disallowed by the Supreme Court in *Bombay Tyre International Ltd. reported in 1983 (14) ELT 1896 SC = **(2002-TIOL-33-SC-CX)***. If one closely observes the definition of the term transaction value, it uses the terminology 'servicing'. It appears that the respondents are taking the benefit of this term 'servicing' for the purpose of adding to the assessable value, the expenses incurred by the dealer towards PDI and free said services by resorting to Clause 7 of Circular dated 1st July, 2002 and Circular dated 12th December, 2002.
>
> 43. Turning to point in question, it is noticed that the definition of the transaction value in Section 4(3)(d) of the said Act is extensive and ropes in the price of the goods and other amounts charged by the assessee by the reason

of sale or in connection with sale. A close reading of Section 4(3)(d) of the said Act would indicate that the term transaction value comprises of price actually paid or payable by the buyer and includes additional amount that the buyer is liable to pay or on behalf of the assessee by reason of sale or in connection of sale whether payable at the time of sale or at any other time including the amount charged for or to make provision for certain items such as advertising etc. One such item is servicing. In view of the definition of the term transaction value, it would be necessary for this Court to apply the definition of the term "transaction value" to the facts of this case and decide the matter. It is admitted by the petitioners that after a car is sold to a dealer on the terms and conditions entered into mentioned in the dealer's agreement, a dealer is required to carry out Pre Delivery Inspection as well as said services in regard to a car which is sold to a customer. From the record it is seen that a dealer is required to pay an amount to the petitioners towards the cost of the car and a dealer cannot charge more than the amount specified by the petitioners. The difference between the price so fixed by the petitioners and the price paid by the dealer constitutes what is called as dealer's margin. A dealer has to spend money to conduct PDI as well as render said services. We are inclined to accept the stand of the petitioners that the dealer is required to perform PDI as well as said services as a part of the dealer's responsibility cast on him as per the dealership agreement. The contention of the petitioners that the petitioners do not charge the dealer for the expenses incurred by the dealer towards PDI and said services is required to be accepted. From the record it is clear that the case of the petitioners so far as the amount incurred by the dealer towards PDI and said services does not form any of the clauses viz. (a) Any amount charged for (b) Amount charged to make provision for (c) Any amount that the buyer is liable to pay to the assessee (d) Any amount that the buyer is liable to pay on behalf of the assessee. The record indicates that once a car is sold by the petitioners to the dealer at a price, the dealer is not required to pay any further amount to the petitioners on account of PDI and free after sales services / after sales services. It is clear that when the petitioners are selling the car to a dealer, price is the sole consideration and the petitioners and the dealer are not related to each other. Having complied with these requirements set out in Section 4(1)(a) of the said Act, the assessable value of the Cars will have to be treated as the one which will be the transaction value. The transaction value will have to be arrived at by taking into consideration the definition of the term transaction value appearing in Section 4(3)(d) of the said Act. The record clearly goes to show that the apart from the price which is paid by the dealer to the petitioners, no amount is recovered by the petitioners from the dealer or the customer. As such, the stand of the respondents that the expenses incurred towards PDI as well as said services have to be included in the assessable value cannot be accepted. This is being observed on the ground that there is no material to show that the expenses for the pre delivery inspection as well as after sales services are paid by the dealer to the petitioners. The dealer renders PDI and said services as a routine and legitimate activity as a dealer. It is also clear from the record and on the basis of the typical dealership agreement entered into with the dealer by the petitioners that a dealer renders PDI as well as said services on account of dealership. It is pertinent to note that the respondents have in affidavit in reply dated 29th June, 2012 admitted that the dealer carries out free PDI and after sales services at their end. It is admitted that labour cost towards PDI and said services is borne out of retailing profit. The contention of the respondents that the expenses incurred for PDI and said services must be included in the transaction value and is required to be included in the assessable value of the car is required to be negatived on the ground that the petitioners do not charge the dealer any amount equivalent to the cost incurred towards PDI and free after sales services.

44. It has been the contention of the respondents that the petitioners provide warranty in regard to the car which is sold by the dealer to the customer. According to the respondents the customer can avail of the benefit of this warranty, provided PDI is carried out in respect of the car and the customer avails of the benefit of said services. According to the respondents the warranty given by the petitioners is linked with expenses incurred towards PDI and said services and that is how the expenses incurred for PDI and said services become a part of the transaction value. We are not inclined to accept this contention. It is true that the Owner's Manual specifically indicates that if the PDI and said services are not availed of, then the customer would not be able to claim the benefit of the warranty. This will go to show that the petitioners undertake responsibilities so far as the warranty aspect is concerned provided the customer takes the benefit of PDI and said services. It has no bearing on the assessable value as it is abundantly clear that to perform PDI as well as render said services is on the dealer's obligation on account of dealership agreement and not on any other count. Once it is held that the PDI and said services are not provided by the dealer on behalf of the petitioners, it cannot be treated as consideration for sale. It also cannot be treated as a deferred consideration. The respondents while issuing Circular dated 1st July, 2002 have wrongly referred to the Rule 6 of the said Rules and have wrongly linked the expenses incurred for PDI and said services with expenses for advertisement or publicity. It is required to be

noted that the provisions of the said Rules will not be applicable to the facts of this case as the transaction between the petitioners and the dealer does not fall within the ambit of Section 4(1)(b) of the said Act. The transaction of sale of a car between the petitioners and the dealer is governed by the provisions of Section 4(1)(a) of said Act as the petitioners as assessee and the dealer as a buyer of the car are not related to each other and price is the sole consideration for the sale. In our view, reference to the Rule 6 of the Valuation Rules in Clause 7 of Circular dated 1st July, 2002 is totally misconceived. The reference made by learned Senior Counsel Mr. Sridharan to the case of *Mr. A.K. Roy and Anr. Vs. Voltas Ltd. reported in 1977 (1) ELT (J177) SC* is apt. We have perused the said judgment and applying the said judgment to the facts of the present case, the respondents would be able to demand Excise duty on the amount which is charged by the petitioners to the dealer. It is to be noted that as per the record, once the car is sold by the petitioners to the dealer for a particular consideration, no other amount is payable by the dealer to the petitioners. It is required to be mentioned that the petitioners are not reimbursing any amount to the dealer towards expenses incurred for the PDI and said services and the petitioners are paying Excise duty on the entire amount for which the petitioners sale the car to the dealer. In the present case, even if it is taken that the petitioners are giving trade discount to the dealer, the petitioners are paying the Excise amount on the whole amount and not the amount which is arrived at after giving the trade discount. Learned Senior Counsel Mr. Sridharan's submission in terms of judgment in the cast of *Atic Industries Ltd. Vs. H.H. Dave, Assistant Controller of Central Excise and Ors. Reported in 1978, (2) E.L.T. (J 444) S.C* = ***(2002-TIOL-173-SC-CX)*** that the price which is relevant for the purpose of Excise duty was the price when the good first entered in the stream of trade is required to be accepted. In the present case, when the petitioners sell the car to the dealer, the goods enter the stream of trade for the first time and, therefore, the amount at which the car is sold to the dealer would be the assessable value on which the Excise duty would be payable. In the present case, the expenses incurred by the dealer for PDI and said services has nothing to do with the term "servicing' mentioned in the transaction value and as such, the said expenses cannot be added to assessable value.

45. On consideration of the Clause 7 of Circular dated 1st July, 2000, it is apparent that the respondents have brought into existence a deeming provision that is to say the respondents have treated all the manufacturers of cars on one platform and by fiction taken a decision to add the expenses incurred towards PDI and said services in the assessable value. It will have to be mentioned that in all cases where the expenses incurred towards PDI and said services are solely borne by the dealer and the manufacturer like petitioners have nothing to do with the said expenses then adding those expenses in the assessable value would be contrary to the provisions of Section 4(1)(a) r/w Section 4(3)(d) of the said Act. Looking to the facts and circumstances of this case, the respondents have not been able to place on record any material to show that the amount incurred towards PDI and said services can fall within the definition of the transaction value.

46. We have noted that after the amendment to Section 4 of the said Act in the year 2000, pursuant to Section 94 of the Finance Act, 2000, the respondents issued Circular No. F B10/ 1/2000/TRU dated 12th May, 2000 as also Circular letter F. No.354/81/2000/TRU a dated 30th June, 2000. A reading of these two Circulars would clearly go to

show that the respondents wanted to clarify the term transaction value and these two Circulars were to be used as guidelines while arriving at the assessable value. Considering these Circulars, we are inclined to accept the submission advanced by learned Senior Counsel Mr. Sridharan that the expenses incurred towards PDI and said services cannot be included in the assessable value. It is peculiar to note that after issuing Circular dated 1st July, 2002, the respondents issued Circular dated 12th December, 2002 and in the said Circular, the respondents clearly admitted that the expenses incurred towards pre delivery inspection and free after sales services provided by the dealer to a vehicle during the warranty period will not be included in the assessable value. Paragraph 4 of the Circular dated 12th December, 2002 reads as under.

"In view of the above facts Board withdraws the Circular No. 355/71/97 CX., dated 19th November, 1997 and subsequent Circular No.435/1/99 CX., dated 12th January, 1999 referred to above. In other words, PDI (Pre-Delivery Inspection) and free after sales services provided by the dealer of the vehicle, during the warranty period will not be included in the assessable value".

47. This assertion viz. Expenses for the PDI and said services is not to be included in the assessable value is at variance from Circular dated 1st July, 2002. The Clause 7 of Circular dated 1st July, 2002, in our view wrongly proceeds to hold that the expenses incurred by the dealer towards PDI and said services are on behalf of the assessee hence, it is wrong to say that such expenses form as one of the consideration for the sale of goods. In our view, equating the expenses incurred towards PDI and said services with the advertisement and publicity charges is incorrect. In our view, Clause No.7 of Circular dated 1st

July, 2002 is not in conformity with the provisions of Section 4(1)(a) r/w Section 4(3)(d) of the said Act.

48. The matter can be looked from yet another angle namely; a perusal of the term 'transaction value' would show that servicing is one item, which is included in the definition of the term 'transaction value'. In our view, on the basis of record it is clear that the petitioners do not render any services to the dealer and no cost is incurred by the petitioners qua the dealer towards the term "servicing". As such, the petitioners have not included any amount in the assessable value with reference to term "servicing" and as such the expenses incurred towards PDI and said services, which expenses are incurred solely by the dealer without reference to the petitioners cannot be included in the term "servicing" appearing in the term "transaction value". For the reasons mentioned aforesaid if a dealer incurs expenses towards the PDI as well as free after sales services without reference to the manufacturer like petitioners, then, the said expenses incurred by the dealer cannot form a part and parcel of the assessable value. To that extent, Clause 7 of the Circular dated 1st July, 2002 is illegal and void and is contrary to the provisions of Section 4(1)(a) r/w Section 4(3)(d) of the said Act. Similarly, the Circular dated 12th December, 2002 to the extent it confirms Clause 7 of Circular dated 1st July, 2002 is void and illegal.

49. For all the aforesaid reasons, we hold that as per Section 4(3)(d) of the Central Excise Act, 1944 the PDI and free after sales services charges can be included in the transaction value only when they are charged by the assessee to the buyer. The impugned circulars, inter alia, purport to hold that where the assessee sells the motor vehicles to a dealer (buyer) at a given price and the dealer in turn sells the said motor vehicles to a customer at a

price with dealers margin which includes the PDI charges and after sales service charges, then, the assessable value for determining the Central Excise duty payable by the assessee has to be determined by including the PDI and after sales service charges even if they are not been charged by the assessee to the dealer, which in our opinion is contrary to the provisions of Section 4(3)(d) of the Central Excise Act, 1944 and, hence, liable to be quashed and set aside. Whether the adjudicating authority in the present case is justified in including the PDI and after sales service charges is a question to be decided in the appeal, if any, filed against the order-in-original".

5. Learned Shri Sanjay Jain, DR for the department has fairly conceded that aforesaid judgment of Hon'ble Bombay High Court is applicable to the facts and circumstances of this case and there is nothing on the record to distinguish the factual issue involved in the appeal with the facts of the above referred judgment of Hon'ble Bombay High Court.

6. In view of the above, following the judgment of Hon'ble Bombay High Court in the matter of **M/s Tata Motors Ltd. vs. Union of India and other** (supra), we do not find any merit in this appeal. The appeal is dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

PK