FAX : 011-26108426

REGISTERED / AD

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

Dated: **27/11/2012**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/1328/2012-EX[DB]**, Stay Order No. **SO/1918/2012** and dated **21/11/2012**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Asstt. Registrar(EXCISE Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	E/Stay/2125/2012	E/1608/2012	**Sml Isuzu Limited** (formerly Swaraj Majda Ltd) Post Bag No 38, Ropar(pb)
			Name and Address of Respondent
2			**C.C.E. & S.T.-Chandigarh-ii** PLOT NO.19... CENTRAL REVENUE BUILDING, SECTOR 17-C, CHANDIGARH 160017

--

Copy To

3Advocate(s) / Consultant(s):

V. Lakshmi Kumaran
5, Jangpura Extension,
Link Road,
New Delhi,
Delhi
110014

--

4 Bar Association, CESTAT, Delhi

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar(EXCISE Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Court No.1

Excise Stay Application No.2125 of 2012 in Appeal No.1608 of 2012

(Arising out of Order-in-Original No.58/CE/CHD-II/2012 dated 23.03.2012 passed by the CCE, Chandigarh-II)

Date of Hearing/Decision: 21.11.2012

For approval and signature:
Hon'ble Mr.Justice Ajit Bharihoke, President
Hon'ble Mr.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 should 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 Departmental authorities?	

M/s.SML Isuzu Limited — Appellants

Vs.

CCE, Chandigarh-II — Respondent

Present: Shri R.K.Hasija, Advocate for the Appellant
Present Shri Sanjay Jain, DR for the respondent

Coram: Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr.Rakesh Kumar, Member (Technical)

STAY ORDER No. 1918/2012-Ex(BR)
FINAL **ORDER No.** A/1328/2012-Ex(BR)

Per: Justice Ajit Bharihoke

The Appellants are engaged in the manufacture of chassis of motor vehicles/components classifiable under chapter 87 of Central Excise Tariff Act, 1985. The appellant have their research and development unit within the factory premises. During the period in dispute, the appellant availed cenvat credit in relation to Inputs/Capital goods/Input services. The Department being of the view that the inputs/capital goods and services utilised by the appellant in the research and development centre had no direct or indirect nexus with the manufacture of final product, issued a show cause notice to the appellant proposing to disallow cenvat credit amounting to Rs.64,59,330/- and recovered the same along with interest. Notice also proposed to impose penalty on the appellant.

2. Jurisdictional Commissioner vide order in original dated 23.3.2012 disallowed cenvat credit availed by the appellant in relation to the Inputs/capital goods and input services utilised in research and development centre and confirmed the cenvat credit amounting to Rs.64,59,330/- against the appellant along with interest and equal amount of penalty was also imposed.

3. Feeling aggrieved of aforesaid order in original the appellant has preferred this appeal wherein the appellant has filed stay application seeking waiver of condition of duty demand, interest and penalty.

4. Shri R.K. Hasija, ld. Advocate for the appellant has contended that the Commissioner has wrongly denied cenvat cenvat to the appellant ignoring the fact that research and development centre run by the appellant within factory premises was basically meant for ensuring quality of the product and also to ensure that the prototype of their product may not fail the mandatory test by the prescribed authority for obtaining of certificate required under the provisions of Motor Vehicles Rules, 1989. In support of this contention, ld. counsel for the appellant has drawn our attention to Rule 126 of the Motor Vehicles Rules, 1989 which reads as under:-

> **126. Prototype of every motor vehicle to be subject to test.**—On and from the date of commencement of central motor Vehicles (Amendment) Rules, 1993, every manufacturer of motor vehicles other than trailers and semi-trailers shall submit the Prototype of the vehicle to be manufactured by him for test by the Vehicle Research and Development Establishment of

the Ministry of Defence of the Government of Indian or Automotive Research Association Of India, Pune, or the Central Machinery Testing and Training Institute, Budni (MP) or the Indian Institute of Petroleum, Dehradun, and such other agencies Is may be specified by the Central Government for granting a certificate by that agency as to the compliance of provisions of the Act and these Rules.

Provided that the procedure for type approval of certification of motor vehicles for compliance to these rules shall be in accordance with the AIS: 017-2000, as amended from time to time:

Provided further that in respect to the vehicles imported into India as completely built units (CBLI), he importer shall submit a vehicle of that particular model and type to the testing agencies for granting a certificate by that agency as to the compliance to the provisions of the Act and these rules".

Ld. counsel submits that according to aforesaid rule, the appellant who is manufacturer of motor vehicles is required to submit prototype of the vehicle for test by agency specified under the rules before starting actual production of motor vehicle for sale. Therefore, any charge incurred in research and development unit would fall within the definition of "Input service", "capital goods" or "input service" for the purpose of availing cenvat credit. Thus he has contended that impugned order is not sustainable and thus this is a fit case for grant of waiver of duty demand, interest and penalty pending appeal.

5. Shri Sanjay Jain, ld. A.R. for Revenue has contended that the above referred plea pertaining to Rule 126 of Motor Vehicle Rules, 1989 was not taken by the appellant during adjudication proceeding and this plea has been raised for the first time before the Tribunal. Thus, ld. A.R. has pleaded that it would be in the interest of justice to remand the case back to the Commissioner (Adjudication) for de novo adjudication in the light of Motor Vehicles Rules, 1989. Ld. counsel for the appellant has no objection if the matter is remanded back for de novo adjudication.

6. In view of the above , after waiving the condition of pre-deposit, we set aside the impugned order and remand the matter back to the Commissioner concerned for de novo adjudication in the light of the Motor Vehicles Rules, 1989 after giving opportunity of being heard to the party.

7. Appeal is decided accordingly.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

mk