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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/583 /2008 - CU[DB] Date **22/03/2012**

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

To :
C.S.T. DELHI
17-B, I.P. ESTATE, IAEA HOUSE, NEW DELHI.

C.S.T. DELHI Appellant

Vs

M/S SILVERTONE MOTORS PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/249/ 2012 CU[DB]** dated 28.02.12 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
M/S SILVERTONE MOTORS PVT. LTD.
D-179, OKHLA INDUSTRIAL AREA
PHASE-I, NEW DELHI.

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-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
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

Date of Hearing:28.02.2012
Date of decision:28.02.2012

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member
Hon'bleShri Rakesh Kumar, Technical Member

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1. Whether Press Reporters may be allowed to see 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?

Service Tax Appeal No.583 of 2008-Customs

CST, Delhi ...Appellant

Vs.

M/s. Silverstone Motors Pvt.Ltd. ...Respondent

(Arising out of Order-in-Appeal No.21/ST/DLH/2008 dated 17.06.2008 passed by the Commissioner of Central Excise (Appeals), Delhi-I)

Appearance: Rep. by Shri K.P. Singh, DR for the appellant.
Rep. by none for the respondent.

CORAM: Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Rakesh Kumar, Technical Member

Final Order No.ST/A/249/12-Cus/Dated:28.02.2012

Per. D.N. Panda:

Respondent is absent today.

2. Ld. Appellate Authority granted relief to the respondent setting aside the adjudication order which required the appellant to suffer service tax of Rs.3,33,539/- in view of net amount included in the taxable value and denied refund. The Adjudication order briefly depicted that the respondent has not challenged the levy itself. It had deposited Rs.16,80,000/- under the Advice of DGCI whereas it claimed that its liability shall be reduced by Rs.3,33,539/-. No material was adduced before the authorities below to ascertain that amount of Rs.3,35,374/- was not includible in the gross value and the contention that liability to tax was Rs.17,56,596/- as against Rs.16,80,000/- alleged by Revenue. We are satisfied that the Adjudicating Authority has made correct exercise to find out to tax what was actually received by the appellant and accordingly denied the refund of Rs.3,33,539/- claimed. Law is well settled that the gross value of the consideration for providing taxable service is liable to service tax. We have held this proposition in various cases. Therefore, respondent was rightly denied the refund by the Adjudicating Authority. The first Appellate order for no ~~rhyme~~ reason directing

3,33,539/-

refund of Rs.~~3505.59~~ needs no sanction. In absence of any appealable reason, the order passed by first Appellate Authority suffers from legal infirmity for which Revenue appeal is allowed restoring the order-in-original.

[order dictated & pronounced in open court]

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

Ckp.