

- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (C) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- षोबी/35-इ के अंतर्गत:-

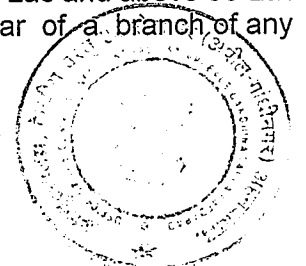
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखाकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any



nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

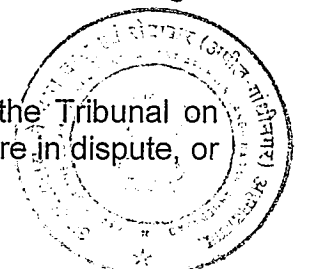
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



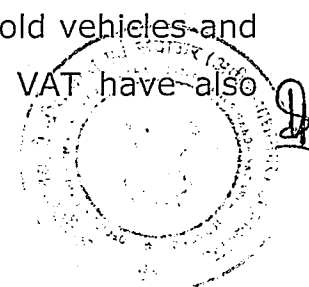
ORDER IN APPEAL

This is an appeal filed by M/s Starline Cars Private Limited, Nagalpur Highway, Mehsana, Gujarat (herein after referred to as the appellant) against the OIO No. 47-18/AC/ST/MEH/17-18 dtd. 26.03.2018 (herein after referred to as the impugned order) passed by the Asstt. Commissioner, Central GST, Mehsana (herein after referred to as the adjudicating authority).

2. The brief facts of the case are that the appellants function as an authorized dealer for new cars manufactured by M/s. Maruti Suzuki India Limited [MSIL] are engaged in the sale, service and repairing of vehicles manufactured by MSIL and are also engaged in the sale of spares of MSIL. They are also engaged in the business of purchase and sale of used/pre-owned vehicles named as Maruti True Value. It was noticed that the appellants had engaged themselves in the activity of providing Business Auxiliary Service (BAS) to their clients for the period upto 30.06.2012 and for the period from 01.07.2012, they had engaged themselves in the activity of providing service in terms of provisions of Section 65 B(44) of the Finance Act, 1994 (for brevity "the Act) and had not paid service tax amounting to Rs. 3,55,901/-. Two show cause notices dtd. 21.10.2015 and 19.10.2016 were served upon the appellants proposing classification of services being provided by the appellants under Business Auxiliary Service as defined under sub clause (i) of clause 19 of Section 65 of the Act; recovery of service tax of Rs. 13,50,253/- for the period 01.04.2010 to 31.03.2014 and Rs. 3,55,901/- for the period 01.04.2014 to 31.03.2016 with interest and imposition of penalties under Sections 75, 77 and 78 of the Act. The adjudicating authority, vide the impugned order, confirmed the demand of service tax of Rs. 13,50,253/- for the period 01.04.2010 to 31.03.2014 and Rs. 3,55,901/- for the period 01.04.2014 to 31.03.2016 along with interest and also imposed penalty of equal amount under Section 78 of the Act.

3. Being aggrieved by the impugned order, the appellants have filed this appeal on the following grounds:

- a) That there is no element of service in their transactions and accordingly sale of goods act for transfer of property registration is not relevant. The property can be sold even without transferring the Registration especially in relation to vehicles. The owner of the old car hands over the old car to them and they take it as stock in trade and when it is sold, it is accounted as a sale. The appellants have treated the entire transactions as purchase of old vehicles and sale of the same to the customers and applicable VAT have also been paid;



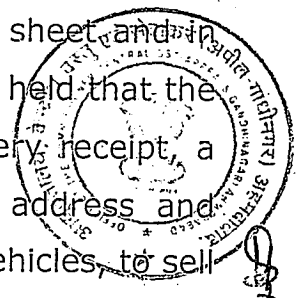
b) That there is no service and therefore no service tax is payable and therefore no interest and penalty.

4. The personal hearing in the case was held on 11.06.2017 in which Shri Shailesh Shah, Chartered Accountant appeared on behalf of the appellants. He reiterated the grounds of appeal and submitted the citation of Kerala High Court in the case of M/s Sai Services Ltd. He also submitted additional written submission in which they contended that they are engaged in trading of new and used cars and there is no element of service. He also submitted copies of purchase agreement, Ledger accounts etc.

5. I have carefully perused the documents pertaining to the case and submitted by the appellants along with the appeals. I have considered the arguments made by the appellants in their appeal memorandum as well as oral submissions during personal hearing.

6. I have gone through the facts of the case, the appellant's grounds of appeal, submissions dated 08.06.2018 and the oral submissions made during the course of personal hearing. The question to be decided in the present appeal is whether the appellant is liable for service tax under BAS.

7. Briefly, the facts to the present dispute are that the appellant [an authorized dealer] for new cars manufactured by M/s. Maruti Suzuki India Limited [MSIL], is also engaged in the sale of spares of MSIL. In order to promote/market the sale of new models of cars, they also offer services relating to exchanging the old vehicle. Now inherent in the first question at [a], supra, is whether the appellant is engaged in sale and purchase of cars, as claimed by them or is engaged in providing the services to such new buyers [i.e. clients] by finding prospective customers for pre-owned cars among other services. The appellant has vehemently stated that they purchase the old cars from the customers after fixing a price for their old cars; that the agreed price is adjusted in the value of the new car. However, the adjudicating authority has held that the purchase and sale of cars are governed by the Motor Vehicles Act, 1988; that there is no purchase and sale of cars from such customers; that in the present case the pre-owned vehicle is never registered in the name of the appellant, a mandatory condition for a new buyer; that the vehicles get transferred from the name of their client/customer to the name of the buyer in the RTO records; that the appellant has never acted as a mercantile agent while the transaction took place; that they had not accounted for the stock, purchase, and sale of such old and used cars in their financial records like balance sheet and in profit and loss account. The adjudicating authority has further held that the dealers only take possession of the vehicle by giving a delivery receipt, a blank sale letter without mentioning the buyers name and address and obtain an authorization from the original owner of pre-owned vehicles, to sell



the vehicle. The adjudicating authority therefore, concluded that the sale actually took place between the original RC owner and the prospective buyer only and that the appellant was merely acting as an intermediary or as a broker and the difference in price is the value of service provided by them in the said transaction. The adjudicating authority therefore, held that the service was akin to promotion or marketing or sale of goods belonging to the client as they have identified the prospective buyers for owners of the pre-owned cars and hence, it would appropriately fall under the definition of BAS.

8. I find that this issue has already been dealt by the Tribunal in the case of M/s. Sai Service Station Limited [2016(37) STR 516 (Tri-Bangalore)], wherein it was held as follows :

"..... The conclusion that appellants are rendering a service and it is not a transaction of sale and purchase is coming only because registration certificate remains in the name of the owner and he provides blank forms enabling transfer of the vehicle as required under the Motor Vehicles Act. Therefore, the only point that arises for consideration is whether non-transfer of registration at the time of transferring possession of the old vehicle by the owner cannot be considered as a sale as held by the Commissioner or not. In this connection, we find that the decision of the Hon'ble High Court of Kerala relied upon by the learned counsel is applicable to the facts of this case. Hon'ble High Court of Kerala in para-15 has made the following observations which in our opinion is relevant and therefore is reproduced below :

"15. It is quite surprising and shocking to note that the lower Court had noticed that Ext. B5 cannot be accepted because it is not registered and sufficiently stamped as required under the Registration Act and Transfer of Property Act. It appears that the lower Court has omitted to notice that the transaction involved in this case is the sale of vehicle which is a movable article and it is governed by the provisions of the Sale of Goods Act. Section 4 of the Sale of Goods Act read as follows :

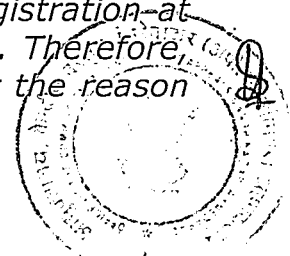
4. Sale and agreement to sell. - (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Once the price is received and the property is delivered, the sale is complete. Going by the definition of sale, when the property is delivered for a price, the sale is complete. The Trial Court seems to be under the impression that unless the registration is effected there is no complete sale. The sale does not depend upon registration-at all. Registration before the RTO is a consequence of sale. Therefore, the Trial Court was not justified in discarding Ext. 85 for the reason mentioned by it."



7. As can be seen, the observations are very clear and for considering a transaction as to whether it is a sale or not, what is required to be seen is not the aspect of registration but whether the price has been received and the property has been delivered or not. In this case, as observed by the Commissioner himself in paragraph 55, the property is delivered and the price has been received by the seller of the old car. Therefore, the first transaction cannot be considered as the one which is not a sale....."

This view was also upheld by the Principal Bench of the Tribunal in the case of My Car Pvt. Ltd. [2015(40)STR 1018].

I further find that in a latest case of Commissioner of C. Ex. Cus. & S.T., Kochi vs. Sai Service Station Ltd. cited at 2017 (7) G.S.T.L. 17 (Ker.) in which while dealing with the question of sale and registration of the vehicle, the Hon'ble court has held as under;

"72. First we must acknowledge that the sale and the registration of the sale are two distinct acts. The sale of a motor vehicle, movable property, takes place under Section 19 of the Sale of Goods of Act. But if the transferee intends to get statutory protection as the owner of the transferred vehicle, he alone must invoke Section 31 of the Act to have the vehicle transferred on to his name."

Further the Hon'ble court has held that:

"Car - Used car - Sale/Ownership transfer of - Car a movable property, and its sale or ownership transfer governed by Sale of Goods Act, 1930, and not Motor Vehicles Act, 1988, which governs its use only - Form 29 prescribed under Central Motor Vehicles Rules, 1989, not a letter of ownership transfer, but an intimation of transfer of ownership only, and Form 30, prescribed under Rules ibid, is an application for transferring ownership of motor vehicle for activities governed by Motor Vehicles Act, 1988."

In view of the foregoing, the activity of purchase and sale of pre-owned car does not fall within the purview of Business Auxiliary Service and hence the demand in this regard is not sustainable and the appellant is not liable for service tax under BAS in respect of this activity. I therefore set aside the impugned order and allow the appeal.

9. The appeal is disposed off accordingly.

अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है !

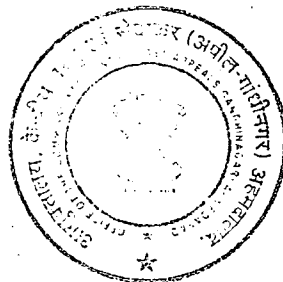
उमा शंकर

(उमा शंकर)


केंद्रीय कर आयुक्त (अपील्स)

अहमदाबाद

दिनांक:



सत्यापित


(धर्मेन्द्र उपाध्याय (अधीक्षक) अपील्स, (केंद्रीय कर, अहमदाबाद)

By R.P.A.D.

To:

M/s Starline Cars Private Limited,
Nagalpur Highway,
Mehsana,
Gujarat

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone,
- (2) The Commissioner, CGST, Ahmedabad (Gandhinagar),
- (3) The Dy./Astt. Commissioner, CGST, Mehsana, (Gandhinagar),
- (4) The Dy./Astt. Commissioner (Systems), CGST, (Gandhinagar),
- (5) Guard File,
- ~~(6) P.A. File.~~

