

F.No. 6/4/2009-DS (CX.1 & 4)

Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise and Custom

New Delhi, the 11 December 2009

To,

Director General (All)

Chief Commissioners of Central Excise including LTU (All)

Commissioners of Central Excise (All)

Sir/Madam

Subject: Inclusion of After Sale Service and Pre-delivery Inspection Charges in the assessable value.

Please refer to the Minutes of the Conference of Chief Commissioners at Shillong on 30th and 31st October 2009 with regard to the issue mentioned above at point No 2.9.

2. On this issue, the Board has vide point No 7 in circular No. 643/34/2002-CX dated 1-7-2002 clarified as follows:

What about the cost of after sales service charges and pre delivery inspection (PDI) charges, incurred by the dealer during the warranty period ?	Since these services are provided free by the dealer on behalf of the assessee, the cost towards this is included in the dealer's margin (or reimbursed to him). This is one of the considerations for sale of the goods (motor vehicles, consumer items etc.) to the dealer and will therefore be governed by Rule 6 of the Valuation Rules on the same grounds as indicated in respect of Advertisement and Publicity charges. That is, in such cases the after sales service charges and PDI charges will be included in the assessable value.
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3. The tribunal in the case of Maruti Udyog Limited [2004 (170) E.L.T. 245 (Tri. - Del.)] held that these charges are not includible in the assessable value as these do not accrue to the manufacturer. But recently, the Tribunal has in the case of Maruti Udyog Ltd, [2009 (238) ELT 186 (T-Del)] doubted the correctness of its earlier decision referred to above, and referred the following question for consideration by a Larger Bench.

"Whether the charges towards pre-delivery inspection and after-sale-services received by dealers from buyers of the cars are to be included in the assessable value of cars in the light of the definition of 'transaction value' given in Section 4(3)(d) of the Central Excise Act."

4. Further, the Supreme Court has in the case of Grasim Industries (C.A. No.3159/2004), referred the question as to whether the concept of transaction value under new Section 4 has made any material departure from deemed normal price concept of erstwhile Section 4(1)(a) of the Act for consideration of the Larger Bench.

5. In view of the above decisions referring the matter to larger bench, the conference was of the view that in this matter show cause notices should be issued demanding duty on the value of these activities, and transferred to Call Book pending the decision of Larger Bench on the issue.

6. The view expressed in the Chief Commissioners Conference has been accepted by the Board and accordingly you may direct the officers in your jurisdiction to continue issuing show cause notice and transfer them to call book, pending the decision of larger bench on the issue.

7. Receipt of this circular may be acknowledged

8. Hindi version would follow.

Yours faithfully

Madan Mohan

Under Secretary (CX.1)