CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 17/12/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70090/2015 dated 16/12/2015

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

Application	Appeal	Name and Address of Appellant
	ST/919/2010	JAK TRADERS PVT LTD 3/204,VISHNUPURI KANPUR(UP)
	Name and Address of Respondent	CCE ,KANPUR 117/7, SARVODAYA NAGAR KANPUR(UP)-208005

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): SH DHARMENDRA SRIVASTAVA,CA
13/392,1, CIVIL LINES
KANPUR(UP)-208001

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., 308, Everest Block, Aditya Enclave, Hyderabad – 38

13 The ICFAI society, 52, Nagarjuna Hill,Panjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad

DATE OF HEARING : 07/12/2015.
DATE OF DECISION : 16/12/2015.

Service Tax Appeal No. 919 of 2010

[Arising out of the Order-in-Appeal No. 5/ST/Commissioner/2010 dated 29/03/2010 passed by The Commissioner of Central Excise, Kanpur.]

For Approval and signature :
Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri B. Ravichandran, 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?	: No.
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: Yes.
3.	Whether their Lordships wish to see the fair copy of the order?	: Seen.
4.	Whether order is to be circulated to the Department Authorities?	: Yes

M/s JAK Traders Pvt. Ltd. — Appellant

Versus

CCE, Kanpur — Respondent

Appearance

Shri Dharmendra Srivastava, C.A. and Mohd. Suhail, Advocate – for the appellant.

Shri Kamal Puggal, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Anil Choudhary, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 70090/2015 Dated : 16/12/2015

Per. Anil Choudhary :-

Heard the parties. The issue involved in this appeal is whether the appellant have rendered Business Auxiliary Services for the financial year 2004-2005. So far other financial years are concerned, covered by the show cause notice 2005-2006 to 2008-2009 the appellant have not disputed their liability and pointed out that they had paid the service tax and whatever shortfall was there, had been paid before the issue of show cause notice. It is admitted fact as recorded in the order-in-original, however, shortfall was paid after the initiation of enquiry by the Department. A show cause notice was issued dated 22/10/2009 for the extended period 2004-2005 to 2008-2009 alleging therein that the appellant is providing taxable services to their clients and collected the tax alongwith the value of service, but not deposited the same regularly in the Central exchequer. Accordingly, show cause proposed to adjudicate and collect the taxable amount of Rs. 50,84,581/- including cess with a further proposal to collect interest and impose the penalty under Section 76, 77 and 78.

2. The appellant appeared and contested the show cause notice. They disputed their liability for the period 2004-2005 contending that the services provided by them, that is facilitating their clients in expeditious

and or timely receipt of various export incentives, and duty drawbacks, is not taxable. They are not providing any service relating to sale of any goods of their clients or service provided by the clients and as such they are not liable to tax under the Business Auxiliary Service head. The show cause notice was adjudicated by the order-in-original dated 29/3/2010 recording the finding that the appellant's services certainly promoted and encouraged the sale of the goods of the clients and serves as the input in support of their business activity. Accordingly, the proposed demand was confirmed appropriating the pre-paid amount of Rs. 42,84,716/- and interest of Rs. 7,92,648/- alongwith further interest and further penalty was imposed of equal amount under Section 76 or @ Rs. 100/- per day for the period prior to 18/4/2006 and Rs. 200/- per day w.e.f. 18/4/2006 – whichever is higher and Rs. 1,000/- + Rs. 5,000/- under Section 77 and equal amount of penalty under Section 78 of Rs. 50,84,581/-. Being aggrieved by this order, the appellant is in appeal before us.

3. So far the demand of other financial years i.e. 2005-2006 to 2008-2009 is concerned, it is pointed out from para 5 of the impugned order that there is no demand in the year 2006-2007. So far the differential tax demand for the year 2005-2006 is concerned, in para 13 of the order-in-original the payment had been recorded at page 12 of the order as having been paid by the challan dated 06/3/2010. So far demand for financial year 2007-2008 and 2008-2009 is concerned for the differential tax, in para 6, it is recorded that differential amount have been paid with interest

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on 24/09/2009. So far the demand for 2004-2005 is concerned for Rs. 7,99,864/-, the learned Counsel have taken us through the definition of Business Auxiliary Services during the relevant period. During the financial year, there is change in the definition w.e.f. 10/09/2004, wherein some services have been added. It is argued on behalf of the appellant that in spite of the amendment, the service provided by them does not fall under any of the categories (i) to (vii) under the Business Auxiliary Services head. Only on the basis of raising of their bill of services, i.e. 20% of the duty drawback or benefit received, their service cannot be classified under Business Auxiliary Services or any other category of taxable service. Accordingly, he prays for setting aside and at the same time as the service is not taxable, but tax has been suo-moto paid alongwith interest, prays that no penalty under Section 76, 77 and 78 is imposable and same are fit to be set aside.

4. The learned AR for the Revenue relies on the impugned order. Relying on the finding of the Commissioner and states that the clients of the appellant have been benefited by timely receipt of their claims under the various exports schemes, whereby encouraging their business and accordingly tax is rightly levied on the appellant.

5. Having considered the rival submissions, we find that in the admitted fact and circumstances, the service provided by the appellant does not fall under any of the sub-Clause (i) to (vii) of Section 65 (19) under the head Business Auxiliary Services. We take notice of the fact

that the appellant have neither facilitated sale of any goods of their client nor service. It is admitted fact that the appellants are not involved in any activity directly relating to promoting or marketing of goods. The appellants provided services like filing drawback claims, filing application for DEPB, EPCG licences, processing application for Star Export House Certificate etc. The reasoning given by the Original Authority for tax liability is that appellants services certainly promoted and encouraged the sale of goods of the clients and served as inputs in support of their business and export activities. Considering the nature and scope of services rendered by the appellants we find no support for such finding. In fact, in respect of drawback the appellants role comes after the goods were sold and exported. We find that the scope of Business Auxillary Services does not cover the activities of appellants as they do not deal with promotion or marketing of goods or services. There is no incidental or auxillary service to such marketing. Accordingly we set aside the impugned order. We also set aside the penalties imposed under Section 76, 77 and 78 of the Act.

(Order pronounced in the open court on 16-12-15.)

(Anil Choudhary)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

PK

प्रमाणित प्रति / Certified True Copy
18/12/15
सहायक पंजीकार / Asstt. Registrar
C.E.S.T.A.T.
38, M. G. MARG, ALLAHABAD-211001