REGISTERED / AD

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

Dated: 07/10/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70037 /2015- dated 16/09/2015

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/1413/2010	CHAWLA MOTORS, BYE PASS ROAD, AGRA.

Name and Address of Respondent	CCE KANPUR 117/7,SARVODAYA NAGAR, KANPUR..

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s):

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

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CIRCUIT BENCH AT ALLAHABAD

APPEAL NO: ST/1413/2010

[Arising out of Order-in-Appeal No: 275/ST/APPL/KNP/2010 dated 21/05/2010passed by the Commissioner of Customs & Central Excise (Appeals), Kanpur.]

For approval and signature:

Hon'ble Shri P. S. Pruthi, Member (Technical)
Hon'ble Shri S.S. Garg, Member (Judicial)

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 should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

Chawla Motors ...*Appellant*

versus

Commissioner of Central Excise
Kanpur ...*Respondent*

Appearance:

None for the appellant

Shri Bharat B. Sharma, Asstt. Commissioner (AR) for the respondent

CORAM:

Hon'ble Shri P. S. Pruthi, Member (Technical)
Hon'ble Shri S.S. Garg, Member (Judicial)

Date of hearing: 16/09/2015
Date of decision: 16/09/2015

Final **ORDER NO:** 70037 /2015

Per: P. S. Pruthi:

The appellant are arranging loans to customers from banks and thus promoting/marketing services provided by banks. In other words, they are Direct Selling Agent of the bank. Therefore, a show cause notice was issued to them demanding service tax under the category of 'Business Auxiliary Service'. In adjudication proceedings, the Dy. Commissioner confirmed the demand of service tax along with interest and penalties under Sections 77 and 78 of the Finance Act, 1994.

2. In appeal proceedings the Commissioner (Appeals) upheld the order of the adjudicating authority holding that a new issue raised by

the appellant before him for the first time that they had provided only space to the bank and therefore their service is classifiable under Business Support Service, is not backed with any Agreement or evidence. He relied on the various judgments including *Chambal Motors (P) Ltd. vs. Commissioner of Central Excise, Jaipur – I* 2008 (009) STR 275 (Tri.Del.) and *Roshan Motors Ltd. vs. Commissioner of Central Excise, Meerut* 2009 (13) STR 667 (Tri.Del.). These judgments held that the services provided by such agents are leviable to tax under 'Banking or Financial Service' or 'Business Auxiliary Service' as the case may be.

3. We find from the records that the appellant have paid the total amount of service tax demanded as well as interest and penalties. However, they have requested for an *ex-parte* order by the Tribunal on merits.

4. We find that the appellant provided marketing services to the respective banks by way of facilitating loans from the bank to the customers. Their argument that they have provided only space to the bank and therefore, their service is classifiable under 'Business Support Service 'is not supported or backed by any evidence in the form of an agreement with the bank. Reliance on the judgment of *Chambal Motors* (supra) and *Auto World* [2008 (012) STR 0074 (CESTAT)] does not favour the appellant. In the former case, it was

held that service tax is payable on the commission received from the banks and, in the latter judgment it was held that the service rendered by the applicant falls under Business Auxiliary Service. Therefore, service tax is payable by the appellant. The plea that the demand is time-barred is not acceptable because there was suppression of facts regarding receipt of commission from the bank and, therefore, extended period of time is invocable.

5. On the issue of exemption on the basis of Notification 6/2005, we find that the Commissioner came to the conclusion that they are using a brand name which disentitles them from the benefit of the Notification. We also note that there is no evidence on record to indicate that the total value of service provided by them apart from the value of services to the bank did not exceed the exemption limit.

6. In view of the above the appeal is dismissed.

(Pronounced in Court)

Sd/-

(S.S. Garg)
Member (Judicial)

Sd/-

(P.S. Pruthi)
Member (Technical)

प्रमाणित प्रति / Certified True Copy
16.12.15
Asstt. Registrar