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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

Dated: **15/07/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/52199-52200/2015-CU[DB]** dated **09/07/2015**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	ST/1068/2010	**PRAGATI AUTO DISTRIBUTORS,** 71/1, M.G.ROAD, SHAH PALACE, OPP. SUBHASH PARK, AGRA.
2	ST/1069/2010	**PRAGATI AUTO DISTRIBUTORS,** 14/194, GHATIA AZAM KHAN, AGRA.
		Name and Address of Respondent
3		C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
4		C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Ravindra Kumar Agarwal & Others
BOLOCK NO. 77, SANJAY PLACE,
COMMERCIAL COMPLEX,
AGRA, UTTAR PRADESH

7 Bar Association, CESTAT, Delhi
8 Director Publications, Customs, Excise. I.P. Estate, Delhi
9 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
10 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
11 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
12 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
13 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
14 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
CIRCUIT BENCH AT ALLAHABAD

Date of hearing/decision: 9.7.2015

Service Tax Appeal No. 1068-1069 of 2010

(Arising out of the Order-in-Appeal No. 271-272/ST/APPL/KNP/2010 dated 20/05/2010 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur).

For approval and signature:

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. H.K. Thakur, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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?	

M/s Pragati Auto Distributor .... Appellant

vs.

C.C.E., Kanpur .... Respondent

Appearance:

Shri Ravindra Kumar Agarwal, Advocate - for the appellant
Shri B.B. Sharma, A.R. for the Respondent/Revenue

Coram: Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. H.K. Thakur, Technical Member

Final Order No. 52199-52200/15 dated 09/07/2015

Per. H.K. Thakur :-

These appeals have been filed by the appellant with respect to OIA No. 271-272/ST/APPL/KNP/2010 dated 20/05/2010.

2. Shri Ravindra Kumar Agarwal (Advocate) appeared on behalf of the appellant and argued that certain amounts were received by the appellant for providing table space to HDFC/ICICI Banks for permitting the employees of those banks to enter their showrooms to interact with the prospective customers who intend to buy LML Scooters, for which appellant is the Authorised Dealer. It was his case that appellant is not providing any services under the head Business Auxiliary Services. He relied upon the case law of **Pagariya Auto Center vs. CCE, Aurangabad [{2014} 42 taxmann.com 371 (Mumbai – CESTAT) (LB)**.

3. Shri B.B. Sharma (AR) appearing on behalf of the Revenue argued that appellant has received certain commissions from the banks in lieu of arranging loans to the customers for purchase of vehicles. It was his case that the activities undertaken by the appellant are covered under the category of Business Auxiliary Services and are chargeable to service tax.

4. Heard both sides and perused the case records.

5. It is the case of the Revenue that appellant is providing Business Auxiliary Services to ICICI Bank and HDFC Bank for which a commission is paid by the banks to the appellant. On the other hand, the case of the appellant is that only space is provided in their premises by the appellant to HDFC and ICICI Banks. That the purpose of providing space to banks is only to allow the officials of these financial institutions to enter their showrooms and canvass with the prospective buyers for arranging loans to the customers. It is also the submission of the appellant that after finalising of loans to the customers a token amount is paid by the banks to the appellant in the shape of some incentive for allowing the bank officials to remain and use appellant's space in their showroom. It is, therefore, the case of the appellant that they are not arranging any loans on behalf of the

banks and the amount received by them cannot be taxed as a consideration under Business Auxiliary Services.

6. Appellant has relied upon the case law of **Pagariya Auto Center vs. CCE, Aurangabad [{2014} 42 taxmann.com 371 (Mumbai – CESTAT) (LB)**. While deciding the issue CESTAT Larger Bench made following observations in para 8 and 11 which are reproduced below:-

> "8. The specific issue referred to this larger Bench, is, in our considered view, incoherently structured. Provision of table space by automobile dealers to financial institutions may have several underlying purposes and may be predicated upon varieties of transactional instruments. Such a provision (of table space) may be incidental to lease of immovable property by the automobile dealer to the bank/financial institutions or it may be an incidental facility provided under a comprehensive agreement between the parties, whereunder the automobile dealer (under the terms of agreement between the parties, oral or written) undertakes to provide/offer a raft of services, some or all of which may be taxable services; including BAS. Mere provision of table space would provide no valuable input which permits identification of the character of the transaction for classification into one or the other or not any, taxable service.
>
> 11. The earliest of the decisions referred before us is the decision in *Silicon Honda* (supra). This is a judgment of a learned single Member. We notice that in this appeal, the assessee's challenge to the adjudication order was on the basis that the conclusion that the assessee had provided BAS was erroneous since Revenue had concluded that the assessee had provided BAS by acting as a commission agent to a bank/financial institution and table space was also provided to representatives of such bank/financial institution. The appeal was allowed by this Tribunal with the observation that the adjudication order had failed to refer to any evidence as to financial institutions paying commission to the assessee for providing loan to their customers, who are secured through the efforts of the assessee and there was no record of the assessee's efforts in having provided

any such service to the financial institutions. It was held that mere presence of the financial institutions in the assessee's premises and receiving a consideration for lease of table space, would not amount to BAS. This judgment is therefore not an authority for a principle that all transactions between an automobile dealer and bank/financial institutions, involving presence of such financial institutions in he premise of the dealer, would amount to BAS. There can be no dispute that mere providing of a table space in an assessee premises would not per se amount to BAS".

7. It is observed from the case records of this appeal that the facts regarding nature of services rendered by the appellant to the banks is not clear. No statement/contract entered between the appellant and the banks has been brought on record by the Department regarding the exact nature of services provided. Appellant has correctly relied upon the case law of **Pagariya Auto Center vs. CCE, Aurangabad** (supra) to the effect that mere providing of table space will not give valuable inputs to identify as to what taxable service is rendered. There is no evidence on record in the present proceedings that commissions paid to the appellant are with respect of facilitating loans to the prospective customers on behalf of the banks. The ratio laid down by the Larger Bench in the case of **Pagariya Auto Center vs. CCE, Aurangabad** (supra) is squarely applicable to the facts of this case. Based on the above observations and settled position of law appeal filed by the appellant is allowed with consequential relief, if any.

(Operative part of the order pronounced in the open court.)

(Justice G. Raghuram)
President

(H.K. Thakur)
Technical Member

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