FAX : 011-26108426

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

To

Dated: 19/01/2016

Appellant as per address in table below
Respondent as per address in table below

Final Order No. ST/A/53911/2015-CU[DB] dated 04/12/2015

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.**

A.R/D.R (CUSTOMS Appeal Branch)

Application	Appeal	
		Name and Address of Appellant
1	ST/594/2009	**D.D.MOTORS** A-100, Phase-11, Mayapuri Industrial Area, N Delhi.
		Name and Address of Respondent
2		-C.S.T. DELHI 17-B, I.P. Estate, IAEA House, New Delhi.

Copy To
3 Advocate(s) / Consultant(s):

S. K. Pahwa
Marwah & Pahwa, 45,
Aradhana Sector 13, R. K. Puram,
New Delhi
Delhi-110066

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi
6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
15 C.D.R. 16 Office Copy 17 Guard File

19/01/16
A.R/D.R (CUSTOMS Appeal Branch)

DB-69

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi - 110 066.

Date of Hearing/Order : 4.12.2015

Appeal No. ST/594/2009-CU(DB)

(Arising out of Order-in-Original No. 20/PKJ/CCE/ADJ/09 dated 29.4.2009 passed by the Commissioner of Central Excise (Adjn.), New Delhi)

For Approval & Signature :

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the 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 Department Authorities?	

D.D. Motors — Appellant

Vs.

CST, Delhi — Respondent

<u>**Appearance**</u>

Shri S.K. Pahwa, Advocate - for the appellant
Shri Rohan Pahwa, Advocate

Shri Satyavir Singh, D.R. - for the respondent

CORAM: **Hon'ble Mr. Justice G. Raghuram, President**
Hon'ble Mr. R.K. Singh, Member (Technical)

Final Order No. 53911/2015

Per R.K. Singh:

Appeal is filed against order in original dated 29.04.2009 in terms of which service tax demand of Rs. 1,06,49,804/- for the period July 2003 to March 2005 was confirmed along with interest; penalties under Sections 77 and 78 of the Finance Act 1994 were also imposed. The impugned demand was confirmed under Business

Auxiliary Service (Section 65 (19) ibid.) because the appellant provided service as direct selling agent/direct marketing agent for banks such as ICICI bank, HDFC bank, Citibank and non-banking financial companies such as Maruti Finance etc. but did not pay service tax in respect thereof.

2. The appellant contended that:

(i) The service provided by it did not fall under business auxiliary service.

(ii) It was under bona fide belief that the service rendered by it was not liable to service tax.

(iii) The cum tax benefit has not been extended, and

(iv) The option for reduced penalty under section 78 has not been extended.

3. We have considered the contention of the appellant and have also perused the records. It is evident from the service provider agreement that the appellant was to interalia, identify eligible customers for granting loans keeping in mind the eligibility criteria notified by the bank/financial institutions. It was also to provide certain services for and on behalf of banks/financial institutions, explain the terms and conditions of the loan, undertake with the

consent of the bank/financial institution the responsibility of advertising and distribute advertising material of the banks/financial institutions and adhere to all marketing and branding guidelines given by the banks/financial institutions. It is thus evident that the service rendered by the appellant clearly fell under limb (ii) / (vi) of the definition of business auxiliary service given in Section 65 (19) ibid. Indeed the service provided by the appellant so clearly fell under the said definition that there was no scope for any ambiguity or confusion regarding the taxability thereof. Bona fide belief is not some hallucinatory belief; it is belief of a reasonable person operating in an appropriate environment. Thus the contention of the appellant that it was under the bona fide belief that the service rendered by it was not taxable is totally untenable. However there is force in the contention of the appellant that cum tax benefit and benefit of reduced penalty under Section 78 should have been extended to it. We find that the benefit of reduced (25% of the demand confirmed) penalty under Section 78 has not been expressly extended by the lower authorities. Therefore following the ratio of Gujarat High Court judgement in the case of ***Ratna mani Metals and Tubes Vs. CCE*** - 2013 – TIOL – 1124 – HC – AHM – CX such benefit can be granted at the level of CESTAT also.

4. In the light of the foregoing analysis, we allow the appeal by way of remand to the primary adjudicating authority for de novo adjudication with the direction that:

(1) The cum tax benefit should be extended to the appellant and the impugned demand should be recomputed accordingly.

(2) The benefit of reduced penalty under section 78 should be extended to the appellant subject to the condition that the recomputed demand along with interest and reduced (i.e. 25% of the recomputed demand) penalty is paid within 30 days of receipt of the de novo adjudication order. Needless to say that in case of default, the penalty under section 78 ibid shall be equal to the recomputed demand. The appeal is disposed of in the above terms

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

RM