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

Dated: 04/08/2014

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/53026/2014-CU[DB] dated 24/07/2014

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/592/2007	**LIBERTY SALES** Smt Neha Manwani,Proprietor of M/s Liberty Sales, 12, Durga Nursery Road, Udaipur.(Raj)
		Name and Address of Respondent
2		**C.C.E. JAIPUR I** N.C.R.Building, Statue Circle, "C" Scheme, jaipur 302005.

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

Bipin Garg
B-1/1289, A - Vasant Kunj,
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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

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13 C.D.R. **14** Office Copy **15** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Service Tax Appeal No.ST/592/2007-CUS[DB]

[Arising out of Order-in-Appeal No. 355(HKS)/ST/JPR-II/2007 dated 08.06.2007 passed by the Commissioner (Appeals), Central Excise, Kanpur]

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?	

M/s. Liberty Sales ...Appellant

Vs.

CCE, Jaipur I ... Respondent

Present for the Appellant : Ms. Sukriti Das, Advocate
Present for the Respondent : Sri Amresh Jain, DR

Date of Hearing: 24.07.2014

FINAL ORDER NO. 53026/2014 DATED: 24.07.2014

PER: R.K. Singh

The appellants have filed this appeal against Order-in-Appeal No. 355(HKS)/ST/JPR-II/2007 dated 08/06/2007 in terms of which the Order-in-Original No. 01/SK/JP-II/2006/J.C. dated 24/02/2006 was up held. The said Order-in-Original confirmed the demand of Rs. 4,58,128/- along with interest and penalties under Sections 76, 77 and 78 of the Finance Act, 1994, invoking the extended period on account wilful misstatement/suppression of facts.

2. The facts, briefly stated, are that the appellants, a proprietary concern, were providing service as a sourcing agent of M/s. ICICI Home Finance Ltd. for the promotion and marketing of the latter's business in terms of a formal agreement signed between the two and were thus covered under Business Auxiliary Service liable to service tax during the period 01.07.2003 to 30.11.2004 involved in the present case. The appellants neither took the service tax registration nor paid the impugned service tax during the said period.

3. The appellants have contended that they were under a bonafide belief that they were not providing Business Auxiliary Service in-as-much as they had only provided space to the ICICI HFL and also, being a proprietary concern they were not covered under the scope of commercial concern.

3. It is seen that the scope of the activity covered under the agreement entered into by the appellants with the ICICI HFL clearly stated that they were appointed for "marketing of and sourcing customers, for ICICI HFL's products". This does not leave any scope for any ambiguity/confusion as regards its coverage under the Business Auxiliary Service which specifically includes such promotion and marketing in its definition. Similarly they could not have been any confusion regarding the appellants being a commercial concern as they were clearly engaged in commercial activity. In these circumstances, when there was no ambiguity or confusion, the contention of bonafide

belief advanced by the appellants is totally hollow and untenable. The appellants have not given any basis/ground for entertaining such belief. They have not shown as to how such a belief on their part could arise. Merely uttering the words "bonafide belief" is not enough for its quasi judicial acceptance. The appellants have to show the basis/grounds for entertaining such belief. As is evident, the appellants have not given even a semblance of any basis/ground based on which such a "bonafide belief" could arise on their part.

4. In the light of the foregoing, we find that the appellants have totally failed to show as to how the findings contained in the Order-in-Original and affirmed in the impugned Order-in-Appeal suffer from any infirmity. In the facts and circumstances of this case, we also find no infirmity in the impugned order. Consequently, the appeal is rejected.

[Dictated & Pronounced in the open Court].

(Justice G. Raghuram)
President

(R.K. Singh)
Technical Member

Neha