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: **11/02/2016**

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

Final Order No. **ST/A/53953/2015-CU[DB]** dated **30/10/2015**

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.**

Deputy/Asstt. Registrar (CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1		ST/1860/2010	**JOSHI AUTO ZONE PVT LTD** 84-85, Industrial Area, Phase-II, Chandigarh.
			Name and Address of Respondent
2			-C.C.E. CHANDIGARH C.R. Building, Plot No. 19, Sector 17-C, Chandigarh 160017

Copy To

3 Advocate(s) / Consultant(s):

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

11/02/16
Deputy/Asstt. Registrar(CUSTOMS Appeal Branch)

85/80

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI 110 066

APPEAL NO: ST/1860/2010

[Arising out of Order-in-Appeal No: 133/CE/CHAND-I/2010 dated 10/09/2010 passed by the Commissioner of Central Excise & Customs (Appeals), Chandigarh – II.]

For approval and signature:

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. C J Mathew, 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 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

Joshi Auto Zone Pvt. Ltd. ...*Appellant*

Vs

Commissioner of Central Excise
Chandigarh ...*Respondent*

Appearance:

Shri B.L. Narasimhan, Advocate for the appellant

Smt. Suchitra Sharma, Commissioner (AR) for the respondent

CORAM:

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. C J Mathew, Member (Technical)

Date of hearing:	**30/10/2015**
Date of decision:	**30/10/2015**

Final **ORDER NO:** 53953/2015

Per: C J Mathew:

The appellant, M/s Joshi Auto Zone Pvt Ltd is engaged in providing 'authorised service station' and 'business auxiliary service' as defined in Section 65 (9) and (19) of the Finance Act, 1994. The appellant is in receipt of incentives/commission from M/s Maruti Udyog Limited and other finance companies. During the period 1st July 2003 to 31st March 2005, the appellant received an amount of ₹ 4,72,15,282/- while reporting a taxable value of ₹ 73,44,579/- as commission received from M/s Maruti Udyog Limited and other financial companies. Likewise for the said period the appellant received an amount of ₹ 14,40,385/- from M/s Maruti Udyog Ltd as incentives without reporting the same as a taxable value.

Accordingly, the original authority confirmed demand of short-paid amount of ₹37,33,287/- for the said period and disallowed CENVAT credit availed to the extent of Rs 4,77,429 on 'demo' cars claimed as capital goods. Penalties under section 76 and 78 of the Finance Act, 1994 were also imposed. This order was challenged before the Commissioner of Central Excise & Customs (Appeals), Chandigarh – II.

2. *Vide* the impugned order 133/CE/CHAND-I/2010 dated 10th September 2010, the first appellate authority reduced the total demand to ₹ 10,04,929/- (inclusive of the wrongly availed CENVAT credit) with interest thereon and, while upholding the imposition of penalty under section 76, reduced the penalty under section 78 to ₹ 10,04,929/- . The specific receipts that were held to be taxable were the commission or remuneration from finance companies (other than Maruti Finance who had discharged the tax liability) and insurance companies, as well as processing fees and incentives received by the executives of the appellant from finance companies.

3. Heard the rival submissions. Our attention was drawn to the decision of a Larger Bench of this Tribunal in *Pagariya Auto Center v Commissioner of Central Excise, Aurangabad [2014 (33) STR 506 (Tri-LB)* which has held that consideration for allocation of 'table space' for accommodation of representative of financial institutions in

the premises of automobile dealer do not fall within the ambit of 'business auxiliary service'. The Larger Bench has held that the nature of the transactions, to the extent that it was not limited to providing 'table space', would determine the leviability under the head of 'business auxiliary service.' It is seen that the records do not indicate that the claim of the appellant that they are mere provider of 'table space' and that these receipts are in the nature of consideration for such allocation can be controverted. Therefore, the tax levied on such remuneration is liable to be set aside.

4. The commission paid through the appellant to their executives is, admittedly, remuneration for the efforts made by the employees of the appellant to promote the products of the finance companies. Admittedly, they are employees of the appellant and, thereby, not free agents. Their promotional efforts cannot be delinked from that of the appellant; the fact that payments are made over to the appellant is sufficient to deduce so. That the appellant chooses not to retain any of the commission and instead passes them on to the executives is an internal policy of the appellant that need not concern the tax authority. Processing fees are the consideration for handling the loan applications and it is, undoubtedly, incidental to promotion of the service that is offered by the finance companies. Having made the claim that receipts on account of 'table space' is not taxable and that claim having been accepted, it stands to reason, and within the

coverage of the decision of this Tribunal in *re Pagariya Auto Centre*, that the dividing line between taxability and non-taxability lies in the nature of the transactions. The commission and processing fees can be inferred to be the remuneration for rendering services within the meaning of section 65(19) of Finance Act, 1994.

5. Accordingly, the impugned order is modified to the extent of setting aside the demand of ₹ 4,00,992/- on commission remuneration received by the appellant from the financial companies. It is seen that the CENVAT credit taken on demo cars has been reversed by deposit of like amount on 29th March 2006. The availing of credit does appear to have its genesis in the mistaken impression of eligibility. We are of the opinion that imposition of penalty for this mistake would be unduly harsh. Penalty is restricted to that tax demand of Rs 1,26,508 that survives. Penalties imposed also stands reduced to Rs 1,26,508.

6. Appeal is accordingly disposed off.

(Pronounced in Court)

(Justice G. Raghuram)
President

(C J Mathew)
Member (Technical)

**/as*