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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

Appeal No. ST/330 /2006 Date 18/03/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
THE COMMISSIONER CENTRAL EXCISE, JAIPUR I
NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR

THE COMMISSIONER CENTRAL EXCISE, JAIPUR I Appellant
Vs
M/S KAMAL AUTO INDUSTRIES Respondent

I am directed to transmit herewith a certified copy of **Final order** No. ST/44/08 **Customs** dated 19.2.08

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   M/S KAMAL AUTO INDUSTRIES
   OPP AERODROME, JHALAWAR ROAD, KOTA
   (RAJASTHAN)
2. Adv. / Consult
3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Customs Appeal Branch)

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

COURT NO. I
Service Tax Appeal No. 330 of 2006

[Arising out of the Order-in-Appeal No. 35 (MPM) ST/JPR-I/ 2006 dated 16/05/2006 passed by The Commissioner (Appeals-I), Customs & Central Excise, Jaipur.]

For Approval and signature :
Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Shri M. Veeraiyan, 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?	:
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?	:

CCE, Jaipur — Appellant

Versus

Kamal Auto Industries — Respondent

Appearance

Shri A.K. Madan, Authorized Representative (DR) – for the appellant.

None – for the Respondent.

CORAM : **Hon'ble Mr. Justice S.N. Jha, President**
Hon'ble Mr. M. Veeraiyan, Member (Technical)

DATE OF HEARING : 19/02/2008.

Final Order No. ST/44/08 Dated : 19/2/08

Per. Justice S.N. Jha :-

This appeal filed by the Revenue is directed against the order of Commissioner (Appeals) dated 25th April 2005 setting aside the order of Assistant Commissioner dated 29/11/05 and allowing the appeal of the respondent.

2. The dispute relates to Service Tax under the Finance Act 1994. It is stated that the respondent, M/s Kamal Auto Industries, is engaged in the business of sale of Two Wheel/Four Wheel motor vehicles. Besides selling the motor vehicles it also renders the services as Direct Selling Agent and Direct Marketing Agent for financial institutions like ICICI Bank, HDFC Bank etc. viz. processing papers, evaluation of customers falling in the category of Business Auxiliary Service. For facilitating purchase of motor vehicles,

it receives service charges from 'such financial institutions. The case of the Revenue is that the respondent is liable to pay Service Tax on the amount charged in lieu of such Business Auxiliary Service. Indeed, the respondent paid Service Tax on a part of the amount received as service charge. Show cause notice was issued to the respondent for payment of Service Tax on the whole amount of service charge and the demand was confirmed by the Assistant Commissioner vide order dated 25/11/05. In appeal which the respondent carried to the Commissioner (Appeals), it took the stand that it is not liable to pay Service Tax at all. The plea found favour with the Commissioner who passed the impugned order holding that the demand was not sustainable.

3. This appeal was taken up ex-parte. The respondent refused to accept notice issued by the registry, and therefore the ~~appeal~~ hearing was taken up depriving us of the benefit of assistance from the respondent side. Sh. A.K. Madan, appearing for the Revenue fairly submitted that the issue is covered by the decision of this Tribunal in the case of **Commissioner of Central Excise, Jaipur – I vs. Chambal**

Motors (P) Ltd. & Ors. reported in **2007 (83) RLT 963 (CESTAT – Del.).** He in particular invited our attention to Para '6' of the judgement which reads as under :-

> "6. It is obvious from the reasoning adopted by the Commissioner (Appeals) that he has proceeded on totally an erroneous footing that a bank cannot avail of 'Business Auxiliary Services' as a client. From the nature of agreements on record including the franchisee agreement in the third appeal, it is clear that the assessees were under an agreement with the bank had undertaken to provide service in relation to promotion or marketing of the 'Banking and Financial Services' provided by the banks. The banks were providing services under the category 'Banking and Other financial services' falling in clause (12) of Section 65. In relation to those services, the respondent-assessees were providing services for promotion or marketing of the banking and other financial services provided by the banks. The banks were, therefore, their clients being recipient of such services from the respondents. It has

come in evidence that the respondents were required to obtain loan applications from their customers who desired to avail loans from the banks. The respondents had undertaken to process those applications and after scrutiny forward them to the bank. Admittedly, for such services, they were paid commission by the bank, which was reflected in their account. Once consideration accrued to them, as against the services provided by them to the bank, by way of commission, it was hardly of any consequence how a portion of that commission, which as per the particulars provided by the Bank was given as "pay out" to assessees in respect of which even the TDS was deducted, was spent by them. If they chose to give some amount from that gross commission amount to their customers either directly or through the bank, it would not change the nature of the receipts in their hand."

4. Having observed ~~then~~ they, the Tribunal remitted the matter with a direction to the Commissioner (Appeals) to decide the case on merits as there was no finding on arrangement which

existed under the agreement as 'to whether in reality any commission was being passed on the bank, or by the bank. It also remained to be seen whether the amount was directly given to the customers of the assesses under some tripartite agreement and whether it became actually payable to the respondents and, if so, at what stage?

5. Prima facie, the facts of the case Chambal Motors, were almost similar to the facts of this case and therefore conclusion of the Commissioner (Appeals) in the impugned order cannot be sustained and the matter has to go back for fresh decision on merit in the light of the decision in Chambal Motors case.

6. The impugned order dated 29/11/05 is accordingly set aside and the appeal is allowed by way of remand.

(Dictated and pronounced in open court)

(Justice S.N. Jha)
President

(M. Veeraiyan)
Member (Technical)

PK