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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/343 /2006 Date 19/08/2008

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

To :
CCE JAIPUR I

NCR BUILDING,STATUE CIRCLE
CSCHME,JAIPUR

CCE JAIPUR I Appellant

Vs

M/SVINAYAK LEASING & FINANCE Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/206/08 **Customs** dated 27.06.08

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/SVINAYAK LEASING & FINANCE

   81,SHOPPING CENTRE,JAWAHAR NAGAR,JAIPUR
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. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. 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. II
Service Tax Appeal No. 343 of 2006

[Arising out of the Order-in-Appeal No. 41 (MPM)/ST/JPR-I/ 2006 dated 24/05/2006 passed by The Commissioner (Appeals), Customs & Central Excise, Jaipur – I.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Rakesh Kumar, 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 – I Appellant

Versus

M/s Vinayak Leasing & Finance Respondent

Appearance

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

None - for the Respondent.

CORAM:**Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 27/06/2008.

Final Order No. 57/206/08 Dated : 27/6/08

Per. S.S. Kang :-

Heard learned SDR as none appeared on behalf of respondent in spite of notice. Revenue filed this appeal against the impugned order, whereby the Commissioner (Appeals) held that respondents are not providing any Business Auxiliary Service as bank is not the client of the respondent. The respondents are only helping the buyer of vehicles in seeking loans for purchase of vehicle and respondents are only giving service to the client of the banks and not to the banks. Therefore, they are out of the scope of Business Auxiliary Service, as the pre-requisite to levy service tax under Business Auxiliary Service is that, work must be done on behalf of the client and commission must be received from the client.

2. We find that this issue is now settled by the Tribunal in the case of **Commissioner of Central Excise, Jaipur – I vs. Chambal Motors (P) Ltd.** reported in **2008 (9) S.T.R. 275 (Tri. – Del.)**. The Tribunal held as under :-

> "5. The Appellate Commissioner has allowed the appeals of the assessees and set-aside the adjudicating orders mainly on the ground that, the Banks are not the **clients** of the assessees. In paragraph 10 of the impugned order, he refers to the definition of 'Business Auxiliary Services' by observing that the tax is on the commission received from the **client**. It is observed that the assessees were not getting any remuneration or fees directly from the **client** and, therefore, they did not satisfy the requirement of the definition of 'Business Auxiliary Services'. It is further observed that there was no value addition by these assessees who had only been getting the share of income from the Bank out of their income and out of which some amount was passed on to the customers as held in the adjudicating orders. It was further observed that, there was no input or output service concept in the context of Banks providing the service to their customers. The Commissioner (Appeals) held that the service provided by the present respondent-assessee was not covered under the category of 'Business Auxiliary Services'. He also found force in the contention of the assessee that there was double taxation and agreed

with the contention that there was no value addition by the respondents-assessees and that there was no allegation in the show cause notices that, the Banks were not discharging their service tax liability.

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. However, since the Commissioner (Appeals) did not go into merits, the question that is required to be examined by the Commissioner (Appeals), is, about the nature of arrangement that existed under the agreement and whether, in reality, any commission was being passed on at the instance of the bank, or by the bank. The question would also remain whether the amount was directly given to the customers of the assessees under some tripartite agreement and whether it became actually payable to the respondents and, if so, at what stage?

7. We, therefore, set-aside the impugned order of the Commissioner (Appeals) in all these three mattes and remand the matters to the Commissioner (Appeals) for reconsidering of all three appeals on merit and decide them afresh, in accordance with law and in light of the observations made in this judgment. The appeals are, accordingly, allowed by way of remand."

3. In view of the above decision, the impugned order is set aside and the matter is remanded to the Commissioner (Appeals) to decide afresh, after affording an opportunity to the respondent. The appeal is disposed of by way of remand.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK