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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/253 /2006 - CU[DB]   Date 04/12/2008

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

To :
M/S ROHAN MOTORS LIMITED
130/1, CHAKRATA ROAD, DEHRADUN,
UTTRANCHAL

M/S ROHAN MOTORS LIMITED   Appellant

Vs

THE COMMISSIONER OF CENTRAL EXCISE,   Respondent
MEERUT I

I am directed to transmit herewith a certified copy of **Final order No.** ST/400/08 **CU[DB]** dated 27.11.08

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
   THE COMMISSIONER OF CENTRAL EXCISE, MEERUT I
   UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
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 - 3
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
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

COURT – II

SERVICE TAX APPEAL NO. 253 OF 2006

[Arising out of Order-in-Appeal No. 35-CE/MRT-I/2006 passed by the Commissioner (Appeals), Central Excise, Meerut-I, Meerut]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical);
Hon'ble Mr. P.K. Das, Member (Judicial)

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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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

M/s. Roshan Motors Ltd., Appellant

Vs.

CCE, Meerut Respondent

Appearance:

Shri B.L. Narasimhan, Advocate for the appellants;
Shri A.K. Madan, Departmental Representative, for the Revenue,

Coram:

Hon'ble Mr. M. Veeraiyan, Member (Technical);
Hon'ble Mr. P.K. Das, Member (Judicial)

Date of Hearing/decision: 27th November, 2008

FINAL ORDER NO. 57/400/08 dated 27.11.08

Per M. Veeraiyan:

This appeal is against Order of the Commissioner (Appeals) No. 35-CE/MRT-I/2006 dated 23.3.2006.

2. Heard both sides.

3. Relevant facts, in brief, are as follows:-

(a) The appellant is an authorized dealer of Maruti Udyog Ltd. and sell vehicles to various customers.

(b) The appellant has entered into agreements with financial companies like Kotak Mahendra Primus Ltd., ICICI Banks, and HDFC Bank for the purpose of arranging finance for the buyers of vehicles sold by them.

(c) Learned advocate submits that the representatives of these financial institutions are accommodated in the dealer's premises itself. The prospective buyers are introduced by the appellant to the finance companies and help rendered in processing the documents and obtaining loan and then vehicles sold to them. For this role, the appellant is receiving service fees from the financing companies. The original authority [as well as Commissioner (Appeals)] have held that the service charges received by the appellant represents charges for business auxiliary service rendered by the appellant to the said finance companies and confirmed the service tax along with interest and imposed penalties under Section 76, 77 and, 78 of the Finance Act 1994.

4.1. Learned advocate submits that the appellant is not rendering services to the finance companies which can be treated as business auxiliary services. Arranging of finance was to enable their customers to buy vehicles from them. It is basically a service, if any, rendered in promotion of sale of vehicle by the appellant themselves. The benefit accruing to the finance companies are incidental in nature. The appellant is not selling or promoting all the services rendered by the finance companies. Their job is not exclusive promotion of services of finance companies. The mere mention in the agreements that they are direct marketing agencies of the finance companies should not be mis-understood and conclusion arrived at that they are rendering business auxiliary services. He also submits that every case where money/consideration is received need no necessarily involve rendering of services.

4.2. When a service is rendered which benefit self and a third party, it cannot be treated as service to the third party. He relies on the decision of the Hon'ble Supreme Court in the case of Philips India Ltd., reported in 1997 (91) ELT 540 (SC) wherein it has been held that the advertisement carried out by the dealers benefiting both the dealer and the manufacturer cannot lead to inclusion of the dealer's portion of the expenses to the assessable value of the product. He also relies on the decisions of the Single Member Bench of the Tribunal in the case of Silicon Honda, reported in 2007 (7) STR 475 (Tri.-B'lore) and in the case of Chadha Auto Agencies, reported in 2008-TIOL-1388-CESTAT-MAD.

4.3. He also submits that this is a case of interpretation of the taxing entry and no mala fide or element of suppression or mis-statement is involved and, therefore, imposition of penalties under Section 76, 77 & 78 is not warranted.

5. Learned D.R. submits that the business auxiliary services inter alia include promotion of services rendered by the client. There is no warrant to say that the service rendered should benefit exclusively the client and no benefit should accrue to the service provider. The terms of agreement clearly provide that the appellant is to work as direct marketing agent for promoting auto finance scheme; that they are required to handle documentation both pre and post disbursements; that they are required to assist in recovering outstanding dues from the customers and even in reprocessing the vehicles in the event of failure by the customers.

6.1. We have carefully considered the submissions from both sides. Normally vehicles change hands from Maruti Udyog Ltd. to the customers through the authorized dealers. The customers could have paid cash or could have arranged finance independently through any other person. If the third party has arranged the finance to the buyer of the vehicle, the services of the said third party would undoubtedly come under the business auxiliary services.

6.2. In the present case the appellant has taken additional responsibility/functions and entered into agreements with the finance companies. The terms of agreement clearly indicate that the appellant is definitely promoting the finance scheme of the finance companies but the fact that the said promotion is limited to vehicles sold by them is not significantly relevant to consider their status.

6.3. In any sale of goods, it can be said that both the buyer and seller are beneficiaries. Similarly in relation to any service both the provider and recipient are beneficiaries. In a school, if there are no teacher/teachers no student can be taught and if there are no students there is no need for teachers. In a way they are rendering services to each other. In this case it has been stressed that the appellant is not rendering services exclusively for the finance companies as their objective is to promote their own business. Is it a case, where the appellant is rendering services to the finance companies? Is it a case, the finance company is rendering services to the appellant? Or is it a case, the appellant is rendering services to the buyer of the vehicles? The customer is interested in buying the Maruti vehicles. The appellant's main business is selling the Maruti vehicles to their customers by positioning themselves between the manufacturer and the customer and they get a margin. The customer is also interested in getting the finance. The appellant has arranged finance to their customers by positioning themselves between the financiers and the customers. This tie up with the finance companies definitely benefits the appellant and at the same it benefits the finance companies more. If it was only to the benefit of the appellant, the finance companies should have charged services charges from the appellant. That is why the finance companies have paid service charges to the appellant. The terms of the agreement together with the fact that the appellant has been paid for the services leads to the conclusion that the appellant is rendering services in marketing rendering the services rendered by the finance companies.

6.4. In similar situations, the Tribunal has held that the finance companies receiving such services as client to the service provider in the case of Chambal Motors (P) Ltd., reported in 2008 (9) STR 275 (Tri.-Del.).

6.5. In the light of the above, we hold that the decision of the authorities in holding that the appellant render business auxiliary services to the finance companies and the service charges received by them are subject to service tax is legal and proper and does not call for any interference. The demand of service tax along with interest is confirmed.

7. The submission by the learned advocate ~~submits~~ that this is a case of interpretation of the taxing entry and no mala fide or element of suppression or mis-statement is involved and, therefore, imposition of penalties under Section 76, 77 & 78 is not warranted is acceptable. In view of fact that the case involved interpretation of question of law, we

hold that this is not a fit case for imposition of penalty. Therefore, penalties imposed are set aside .

8. Appeal is disposed of in above terms.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK