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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/301 & 361 /2007 - CU[DB] Date 05/01/2009

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

To :
M/S CROSS ROAD AUTO PVT. LTD.
40, GOVT. INDUSTRIAL ESTATE, KAPLI ROAD,
OPPOSITE SINDHI COLONEY, KANPUR
M/S CROSS ROAD AUTO PVT. LTD. Appellant

Vs

C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/439-40/08 **CU[DB]** dated 18.11.08 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
   C.C.E. KANPUR
   117/7, SARVODAYA NAGAR, KANPUR 208005.
2. Adv. / Consult
   MR.AMIT AWASTHI
   113/145, SWARUP NAGAR, KANPUR-208002
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 – III

SERVICE TAX APPEAL NO. 301 & 361 OF 2007

[Arising out of Order-in-Appeal No. 85-CE/APPL/KNP/2007 dated 01.03.2007 passed by the Commissioner (Appeals), Central Excise, Kanpur and, Order-in-Review No. 03/2006-07 dated 31.03.2007 passed by the Commissioner, Central Excise, Kanpur]

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial),
Hon'ble Mr. 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?	No.
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 Departmental authorities?	Yes

M/s. Cross Road Auto Pvt. Ltd., Appellant

Vs.

CCE, Kanpur Respondent

Appearance:

Shri A.K. Dixit, Advocate for the appellant,
Shri Fateh Singh, Departmental Representative, for the Revenue,

Coram:

Hon'ble Mr. P.K. Das, Member (Judicial),
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 18th November, 2008

FINAL ORDER NO. S7/439-440/08 **dated** 18/11/08

Per Rakesh Kumar:

Facts of the case, in brief, are that the appellants have taken service tax registration and are discharging service tax liability in respect of service being provided by them as authorized service station of General Motors. It was subsequently found that, in addition to their activity as authorized service station they were also engaged in arranging car loan from various banks/financial institutions to the car buyers for which they were getting commission from banks/financial institutions which is covered by the definition of "Business Auxiliary Services.". On being pointed out by the department, they obtained separate service tax registration for Business Auxiliary Services and voluntarily paid an amount of Rs. 34,485/- as their Service Tax liability calculated on the net amount of commission being received by them. Subsequently, after issue of show cause notice, the Assistant Commissioner vide Order-in-Original dated 15.9.2006 confirmed the service tax demand of Rs. 1,95,742/- along with interest thereon at the applicable rate and appropriated the amount of Rs. 34,485/- already paid by them towards this demand. Besides this, the Assistant Commissioner also imposed consolidated penalty ~~consolidated~~ of Rs. 10,000/-. Appellants' appeal against this order was dismissed by the Commissioner (Appeals) vide Order-in-Appeal dated 2nd March, 2007 and against this order the appellants filed appeal No. ST/301/2007 before this Tribunal.

1.1 The Assistant Commissioner's order dated 15.9.2006 was reviewed by the Commissioner under Section 84 of the Finance Act for imposition of separate penalty under section 75A, 76, 77 & 78 of the Finance Act, 1994 and the Commissioner vide Review Order dated 31.3.2007 imposed penalty of Rs. 100/- per day starting with the first day after the due date till the date of actual payment of outstanding amount of service tax by the appellant, under Section 76 of the Finance Act, 1994; penalty of Rs. 1000/- on the appellant under Section 77 of the Finance Act, 1994 for their failure to submit their periodical returns in time, penalty of Rs. 500/- under Section 75A of the Finance Act, 1994 for their failure to include their 'Business Auxiliary Services' in the registration earlier taken by them and the penalty of Rs. 1,95,742/- imposed under Section 78 of the Finance Act, 1994 for suppression of value of taxable services. Against this Order-in-Review appeal No. ST/361/07 has been filed by the Appellant. Since both the appeals involve the same issue they were heard together.

2. Heard both sides.

2.1 Shri A.K. Dixit, learned Advocate pleaded that:

(a) the appellants are commission agent and, therefore, they were not liable to pay any service tax under notification No. 13/03-ST;

(b) even if their activity is treated as Business Auxiliary Service not exempt under notification No. 13/03-ST, they are eligible for exemption under notification NO. 25/04-ST dated 10.9.2004; and

(c) In any case, the department has wrongly charged service tax without taking into consideration the actual commission received by them and the service tax is payable only on the net commission received by the Appellant. He also pleaded that there is no justification for imposition of penalty under Section 75A, 76, 77 & 78. He emphasized that the appellants have not suppressed anything from the department and that as soon as the department pointed out that the commission being received by them from bank/financial institutions for arranging car loan is liable to service tax, they paid the service tax on the admitted amount i.e. on the net amount.

2.2. The learned D.R. pleaded that the activity of the appellants i.e. arranging car loan from the bank/financial institutions is Business Auxiliary Service and, therefore, the appellants were liable to pay service tax under business auxiliary service head on the gross amount of commission received by them. In this regard he relied upon the judgment of the Tribunal in the case of CCE & C & ST, BBSR-I vs. SANFIN, reported in 2008 (89) RLT 538, wherein it was held that in respect of Business Auxiliary Service, the tax is payable, as per the provision of Section 67 of the Finance Act, 1944, on the gross amount received by the assessee from banks for processing and recommending the loan applications. He pleaded that since the appellants did not apply on their own for addition of business auxiliary service in their registration certificate; service tax on the business auxiliary services being provided to the banks/financial institutions and the commission received from the banks/Financial Institutions was not disclosed in the returns filed by them, penalty under Section 75A, 76, 77 & 78 has been rightly imposed.

3. We have carefully considered the submissions from both sides. There is no dispute about the fact that the activity of the appellants i.e. arranging car loan from the banks/Financial Institutions to various clients is business auxiliary service. The appellants have pleaded that they are to be treated as commission agent and, hence, they are exempt from service tax under notification No. 13/03-ST. We do not accept this contention of the appellants as, firstly, this point was not raised before the Asst. Commissioner and, secondly, the appellants are not commission agent as per the definition of 'Commission Agent' given in Explanation to the notification No. 13/03-ST. Second point of dispute is, as to whether the service tax has to be paid on the gross amount being received from banks/financial institutions or on the net amount. We find that this issue stands decided against the appellant by this Tribunal in the case of CCE & C & ST, BBSR-I vs. SANFIN (supra) wherein in respect of this very service the Tribunal has held that tax is payable on the gross amount received from the bank. Next point of dispute is, as to whether the appellants are liable for penalty under Sections 75A, 76, 77 & 78. In

view of the circumstances of this case the period of dispute being from 1.7.2003 to 31.10.2004 when the Business Auxiliary Services had just been brought within the service tax net w.e.f. 1.7.2003 and, therefore, possibility that person providing this service may not be aware of its scope and, in view of the fact that the appellants have paid the admitted amount as soon as non-payment of service tax on the commission received from the banks/Financial Institutions was pointed out, we are of the view that consolidated penalty of Rs. 10,000/- upheld by the Commissioner (Appeals) would meet the end of justice. Penalty imposed under Order-in-Review dated 31.3.2007 passed by the Commissioner is set aside. Appeals are disposed of in above terms.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

(RAKESH KUMAR)
MEMBER (TECHNCIAL)

Dated 19th December, 2008

RK