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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

Date 17/02/2009

Appeal No. ST/297 /2007 - CU[DB]

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

To :
M/S B.M.AUTO
100-A RAJPUR ROAD, DEHRADUN Appellant

Vs

M/S B.M.AUTO Respondent

C.C.E. MEERUT I

I am directed to transmit herewith a certified copy of **Final order No.** ST/74/09 CU[DB] dated 4.2.09 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. MEERUT I
EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
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 -
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,Che
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,Ahmedal
15 Office Copy
16 Guard file

Assistant Reg
(Customs Appeal Br

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Service Tax Appeal No. 297 of 2007-Cus.

(Arising out of Order-in-Appeal No. 13-CE/MRT-I/2007 dated 22.1.07 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut-I)

M/s B.M. Auto — Appellant

Vs.

CCE, Meerut — Respondent

Appeared for Appellant : Shri Brij Mohan Ajmani. CA
Appeared for Respondent : Shri Vijay Kumar, DR

Date of Hearing: 4.2.2009

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER
HON'BLE MR. RAKESH KUMAR, TECHNICAL MEMBER

Final Order No. 57/74/09 dated............

Per D.N. Panda:

This case is an outcome of the order of remand dated 2.12.05 passed by learned Commissioner (Appeals). The adjudicating authority held that this Appellant is liable to duty under the classification of the service of 'Business Auxiliary Service'. This was done by order dated 15.2.06 at page 19 of Appeal Folder. Being further aggrieved, the Appellant was before ld. Commissioner (Appeals) in Appeal Case No. 13-CE/MRT-I/2007 again who confirmed the order-in-original dated 15.2.06 by his order dated 22.1.07.

2. Ld. authorised representative for the appellant submits that they are not covered by law at all for the Service Tax liability in view of the nature of the activity carried on by the Appellant. The

Appellant is an automobile dealer who sells two wheelers with the financial assistance. The Appellant has provided a table space to process applications of the prospective buyer and gets commission from processors for the facility provided to them. Department has come out to level charge against the appellant holding that the commission paid to the appellant shall be liable to tax. Therefore, the Appellant prays that this Appellant not having been provided any service beyond the scope of Finance Act 1944, it should succeed.

3. Ld. DR submits that there are cases in favour of the Revenue. As has been decided by the Tribunal in the case of **M/s Roshan Motors Ltd. Vs. CCE** in ST Appeal No. 253/2006 disposed vide Final Order No. ST/400/08 dated 27.11.08 and in **M/s Cross Road Auto Pvt. Ltd. Vs. CCE** vide Final Order No. ST/439-440/08 dated 18.11.08 in ST Appeal No. 301 & 361 of 2007. Therefore the Appellant cannot succeed at this stage.

4. Heard both the sides and perused the record.

5. We have gone to the basic root of the matter. We found that the manner how this Appellant should be brought to the charge on the Appellant is not brought out in the order by cogent evidence. The correspondence dated 14.12.04 although was considered by Authorities below to be a basis for initiation of the proceeding, Ld. Adjudicating Authority has bypassed the provisions of law to appreciate that the action initiated may result in civil or criminal liability. It is therefore necessity of the law that such a liability should be brought to the notice of the Appellant clearly by a show-cause notice or in the course of a proceeding to grant him an

opportunity of defence. If such a course of natural justice is not followed, the proceeding can never sustain. We would have brought the whole proceeding to halt today. But when the proceeding on record is also suffering from some technical difficulties of both sides to demonstrate case of each other, it is required that ld. Adjudicating Authority should remove the defect bringing home the charges clearly against the Appellant and grant a fair opportunity of hearing to the Appellant. If such process is followed and the matter is decided in accordance with law there may not be any grievance by the Appellant.

6. With the aforesaid direction we remand the matter to ld. Adjudicating Authority to do justice to the litigants. The Appellant, of course, shall be entitled to a fair opportunity of hearing and lead defence adducing documentary and/or oral evidence as permissible under law and the Authority shall pass a speaking and reasoned order.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM*