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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/518 /2007 - CU[DB] Date 16/03/2009

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

To :
M/S INFINITY CREDIT
SH DILIP NAHAR, PROP OF M/S INFINITY CREDIT,
397, ROAD NO 9, ASHOK NAGAR, UDAIPUR(RAJ)
313001

M/S INFINITY CREDIT Appellant
Vs
C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/100 2009 CU[DB]** dated 04.03.09 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. JAIPUR II
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult : Sh. Bipin Garg, Adv
   B-1/1289-A Visank Junj, New Delhi

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:4.3.2009

Service Tax Appeal No.518 of 2007

Arising out of the order in appeal No.371 (HKS)ST/JPR-II/2007 dated 19/06/2007 passed by the Commissioner (Appeals II),Customs , Central Excise, Jaipur.

For Approval and Signature:

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

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	NO
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

Appellant		Respondent
M/s Infinity Credit	vs.	C.C.E., Jaipur

Appearance:

Shri Atul Gupta, Company Secretary for the appellant
Shri L.B. Yadav, Authorized Departmental Representative (DR) for the Revenue

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

Final Order No. 57/100/09

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No.371 (HKS)ST/JPR-II/2007 dated 19-06-2007.

2. Heard both sides.

3. The appellant is a proprietor concern and acted as a sourcing agent of M/s ICICI Home Finance Ltd. in pursuance of an agreement entered with the latter and received commission for the services rendered. The

original authority held that the applicant is engaged in rendering services under the category of Business Auxiliary Service and confirmed the demand of Rs.76,945/- relating to the period 1/7/03 to 29/2/04 along with interest and imposed penalty under Sections 76, 77 & 78. Commissioner (Appeals) has upheld the order of the original authority.

4. Learned Company Secretary fairly concedes that the issue whether a proprietary firm can be considered as a commercial concern has been decided by the Tribunal against the assessee in the case of C.C.E., Jaipur vs. R.S. Financial Services reported in 2008 (9) STR 231 (Tri-Del.) and , therefore, does not contest the demand of service tax. However, he seeks waiver of penalties imposed. As a proprietary firm, they were not familiar with the law and there was misunderstanding prevailing in the field as to whether the proprietary firm can be considered as a commercial concern for the purpose of business auxiliary service. He also relies on the Board's Circular No.62/11/2003-ST dated 21.8.2003 which was issued in the context of commissioning or ~~installing~~ instalation services wherein it was clarified that the individual cannot be treated as a commercial concern.

5. Learned DR reiterates the finding of the Commissioner (Appeals).

6. We have carefully considered the submission from both sides. We confirm the demand of service tax along with interest as uncontested. However, considering the entire facts and circumstances of the case, we hold that there was sufficient cause for the appellant in entertaining doubt that they were not liable to pay service tax especially in the light of Board's instruction cited supra and, therefore, the invoking the provisions of Section 80 of the Finance Act, we set aside the penalties imposed on the appellant.

7. Appeal is disposed of on the above terms.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)