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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. ST/173 /2009 – SM[BR] Date 22/06/2009

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH — Appellant

Vs

M/S HIRA AUTOMOBILE LTD. (WORKSHOP) — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 600 / 2009 –SM[BR] dated 4.6.2009 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S HIRA AUTOMOBILE LTD. (WORKSHOP)
   13-B, FACTORY AREA, PATIALA.
2. Adv. / Consult SHRI ATUL KUMAR GUPTA C.A.
   259, AGGARWAL SHOPPING CENTER
   CD- BLOCK, PITAM PURA DELHI-110088.

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16 Office Copy
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

<u>COURT – III</u>

<u>SERVICE TAX APPEAL NO. 173 OF 2009-SM</u>

[Arising out of Order-in-Appeal No. 02/CE/CHD/2009 dated 14.01.2009 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

For approval and signature:

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?	
2.	Whether it would be released under Rule 27 of the 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?	
4.	Whether order is to be circulated to the Departmental authorities?	Yes

CCE, Chandigarh — Appellant

Vs.

M/s. Hira Automobiles Ltd., — Respondents

Appearance:

Shri R.K. Verma, D.R. for the Revenue;
Shri Atul Kumar Gupta, C.A. for the respondents

Coram:

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

<u>Date of hearing/decision: 4th June, 2009</u>

FINAL ORDER NO. 600/09-SM(BR) **dated** 4.6.09

Per P.K. Das:

Revenue filed this appeal against the order of the Commissioner (Appeals) whereby penalties under Section 76 & 78 of Finance Act were set aside.

2. After hearing both sides and on perusal of the records, I find that the respondents were receiving commission from the customers for arranging loan from bank. The learned Chartered Accountant on behalf of the respondents submits that there was a doubt about levy of tax relating to services Motor Vehicles and Business Auxiliary Services for arranging finance. He also submits that they have deposited the tax in the month of November, 2006 for the period September, 2004 to March, 2006. Show cause notice was issued on 7.2.2008. The original authority confirmed the demand of tax of Rs. 11,72,392/- and appropriated the amount as deposited by them and also imposed penalty of equal amount under Section 78 of the Act and penalty under Section 76 of the Act. The Commissioner (Appeals) set aside the penalties under Section 76 & 78 of the Act. The Commissioner (Appeals) observed as under:-

"I have examined the case records. The appellants are pleading vehemently, that there was no suppression of facts or any intent to evade payment of service tax. The appellants had been paying service tax on finance commission received from banks but were not doing so on finance payments from MUL. IN a letter date d25.10.2004 the appellants had informed the department that the agreement for financing the cars/motor vehicles was between MUL & different banks and service tax was paid directly by the MUL. This is also clear form the clarification note of MUL which is on record. There is also on record a copy of letter dated 22.9.2006 in which MUL has informed all its dealers that as per legal opinion received by the MUL service tax was now payable by the dealers on fees/commission received by them for MF business done on or after 10.9.2004. It further informs the dealers that the service tax paid by them would be reimbursed to them by the MUL. It is the submission of the appellants that they were in the process of calculating the tax, when the audit party visited them and pointed out the liability, which was already in their knowledge."

3. It is seen that the Tribunal in an identical issue in the case of Wings Group of Companies vs. Commr. of S.T., Bangalore, reported in 2008 (11) STR 63 (Tri.-Bang.) while deciding the stay application observed that activity of arranging loan and receiving commission would come within the purview of "Business Support Services" effective from 1.5.2006 and not under "Business Auxiliary Services". Thus, it is clear that there was doubt on the levy of tax on the said activity. Hence, the Commissioner (Appeals) rightly set aside the penalties invoking Section 80 of the Act. I do not find any reason to interfere with the order of the

Commissioner (Appeals). Accordingly, appeal filed by the Revenue is dismissed.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK