

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/425 /2011 – SM[BR] ST / CO/ 144/2011-SM[BR]

Date 21/10/2011

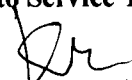
Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)
C.C.E. INDORE

Appellant
Vs
Respondent

M/S BHACHAWAT TRADE VISION PVT. LTD.

I am directed to transmit herewith a certified copy of **Final order No. 729 / 2011 –SM[BR]** dated 19.10.2011
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 BHACHAWAT TRADE VISION PVT. LTD.
SANJEET ROAD, MANDSAUR (M.P.)
2. Adv. / Consult **SHRI K.K. ANAND ADV.**
A-103, DEFENCE COLONY NEW DELHI-24.
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd., No.2 (Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10, Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file


Assistant Registrar
(SM Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH**

Service Tax Appeal No.425 of 2011-SM
Service Tax Cross Objection No.144 of 2011-SM
(Arising out of Order-in-Appeal No.IND/458/2010 dt.23.12.10
passed by the Commissioner (A), Customs, Central Excise &
Service Tax, Indore)

Date of Hearing: 28.09.2011

Date of decision: 19.10.2011

For approval and signature:

Hon'ble Mrs.Archana Wadhwa, 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 should 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

CST, Indore

Appellant

Vs.

M/s.Bhachawat Trade Vision Pvt.Ltd.

Respondent

Present for the Appellant: Ms.R.Jagdev, SDR

Present for the Respondent: Shri Saurabha Yadav, Advocate

Coram: Hon'ble Mrs.Archana Wadhwa, Member (Judicial)

Final ORDER NO. 729/2011 SM (B)

PER: ARCHANA WADHWA

Being aggrieved with the order passed by the Commissioner (Appeals) vide which he rejected the appeal filed by the Revenue before him, the present appeal stands filed by the Revenue. Ms.R.Jagdev, learned SDR appearing for the Revenue and Shri Saurav Yadav, learned Advocate appearing for the respondent.

2. As per facts of records, the respondent is a authorized dealer of motor vehicle registered with the department for providing services of authorized service satiation. It is seen that they were also arranging vehicle finances for their customers through various banks on commission basis. The Revenue has entertained the view that such services are amounting to business auxiliary services and the appellants are liable to service tax in respect of the same.

3. The respondents before issuance of show cause notice dated 18.10.09 have deposited service tax of Rs.1,97,746/- alongwith interest of Rs.1,06,251/-. While adjudicating the show cause notice, the Assistant Commissioner confirmed the demand and appropriated the same from the deposit already made by the assessee. As regards penalty, he observed that since there was reasonable cause for failure on the part of the respondents, the provision of section 80 of Finance Act, 1994 gets attracted and penalty under section 76 and 78 *ibid* is not required to be imposed.

4. Being aggrieved with the said order, the Revenue has filed the appeal before the Commissioner (Appeals). The appellate authority by taking into consideration the various precedent decisions, held that there was a lot of confusion in the field and there is no suppression on the part of the assessee, the provision of section 80 gets attracted. He also took into consideration the fact that the respondents have deposited the entire duty alongwith interest even before issuance of show cause notice, this establishes their bonafide[✓] non imposition of penalty upon them by the adjudicating

authority was proper. He accordingly dismissed the appeal. Hence the present appeal.

5. After hearing both sides, I find that the issue is no more res integra. As regards merits, it stands held in various decisions of the Tribunal that such arrangement of loans by the authorized dealers amount to providing of services under the category of business auxiliary services. However, in the same decision it stands held that since the issue involved is of interpretation of law, the penalties are not justified. One such reference can be made to the Tribunal's decision in the case of Roshan Motors Ltd. vs. CCE, Meerut-2009 (13) STR 667 (Tri.-Del.). For better appreciation, para 7 of the said judgement is reproduced below:-

"The submission by the learned Advocate 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 the 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 are aside."

6. By applying the ratio of the above decision, I find that non imposition of penalties by both the authorities below was justified. Accordingly, Revenue's appeal is rejected.

7. The respondents have also filed cross objection seeking refund of deposit already made by them. However, as I find that the respondents had deposited the duty amount^{as} also interest before the issuance of show cause notice. The same was not contested either

before the original authority or before the Commissioner (Appeals).

No appeal stands filed by the respondents before the Commissioner (Appeals) against the order of the Assistant Commissioner. It is not open to the respondents to claim refund of duty already deposited by them, when the order of the Assistant Commissioner confirming the said duty remains unchallenged by the respondents. The Cross Objections are also rejected.

8. In view of the above, Revenue's appeal as also cross objections get rejected.

(Pronounced in the open court on 19/10/11)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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