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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/525 /2007-526 /2007 - CU[DB] Date **07/09/2011**

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

To :
M/S NARMADA VEHICLESW PVT. LTD.
6/1,INDUSTRIAL AREA, GOVINDPURA, BHOPAL-462023

M/S NARMADA VEHICLESW PVT. LTD. Appellant

Vs

C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/433-34 2011 CU[DB]** dated 30.08.2011 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 BHOPAL
HOSHANGABAD ROAD, 48,
ADMINISTRATIVE AREA, AREA
HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult
MR.Z. U. ALVI
D-8,BDA COLONY, ADJACENT
GARUDA TRAVELS. KOH-E-FIZA BHOPAL-01

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions 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 - 110005
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 (Haryana)
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
(Customs Appeal Branch)

14. M/S NARMADA VEHICLES PVT. LTD.
6/A, INDUSTRIAL AREA, GOVINDPURA, BHOPAL-462023

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

Service Tax Appeal No.525-526 of 2007

(Arising out of Order-in-Appeal 28 & 29/ST/BPL/07-08 dt.24.2.10 passed by the CCE(A), Ghaziabd)

Date of Hearing/Decision: 25.08.2011

For approval and signature:
Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Mathew John, 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 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

M/s.Narmada Vehicles Pvt.Ltd. Appellant

Vs.

CCE, Bhopal Respondent

Present for the Appellant: Shri Z.U.Alvi,Advocate
Present for the Respondent: Shri K.P.Singh, SDR

Coram: Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Mathew John, Member (Technical)

Final **ORDER NO.** ST/433-434/11

PER: ARCHANA WADHWA

After hearing the both sides, we find that the service tax stands confirmed against the appellants on the ground that they have provided business auxiliary services to various banks during the period from July, 2003 to December, 2004.

2. As per facts on records, the appellants are dealers of motor vehicles of M/s.C.I.Hyundai, the manufacturer of cars. As their customers are interested in procuring loans for the vehicles purchased from the appellants, the appellants facilitated their customers by procuring loans from various banks like ICICI Bank and HDFC Bank. For ~~getting~~ arranging loan facility from the banks for their customers, they received certain amount of commission from the banks.

3. The Revenue ~~maintained the~~ entertained a view that such services are in the nature of promotion and marketing services for the banks and fall under the category of "business auxiliary services". As such, the commission received by them is liable to be taxed.

4. Accordingly, the proceedings were initiated against them which culminated into an order passed by the original adjudicating authority and confirmed by the appellate authority.

5. Learned Advocate appearing for the appellants submitted that at the initial stage they were disputing the legal issue as to whether the services being provided by them to their customers can be held to be under the category of business auxiliary services on account of promotion and marketing for the banks. However, he fairly agrees that the issue is no more res integra and stands settled against them by various decisions of the Tribunal. He, however, seeks to differentiate those judgements on the ground that the commission received by them from the banks varies from deal to deal and fixed commission. However, we do not find any merit in the above

contention inasmuch as providing or not providing of the services to the banks is not dependent upon the quantum of commission being received by them.

6. It is further seen that the confirmation of the demand in the present case is on the basis of statement given by the banks indicating the gross payout. It is the contention of the appellants that the entire amount of commission is not received by them and part of the same goes to the customers directly from the banks. Learned Advocate has submitted that the gross payout indicated by the banks in their letter to the Revenue related to the total amount of commission paid to the appellants as also to the customers. As such, it is their contention that the service tax should be levied only on the actual commission received by them.

7. After hearing the learned SDR on the above issue, we find that there is no dispute about legal issue. If the commission is provided to the appellants, though physically, a part of the same is directly delivered to the customers, at the behest of the appellants, it is the total amount received by them which would form the value of the services rendered by them. We find that the said issue was also the subject matter of the Tribunal's decision, in which it was held that it is the total commission earned by the assessee, which would be liable to service tax, irrespective of the fact that a part of the same is either handed over by the assessee to its customers or the same is directly paid by the banks to the customers.

8. Learned Advocate appearing for the appellants submits that he has no serious dispute about the legal issue. However, he submits that the gross amount of "payout" revealed by the bank is the total amount of commission given by them to the assessee as also to the customers directly. The banks in their communication to the department have only given the total amount of payout without indicating as to whether the same was the commission earned by the assessee or given to the customers directly by the banks itself. The contention of the Advocate is that if the bank has given the commission to the customers the said amount cannot be included in the value of the services provided by the assessee to the bank. He submits that the above position would become clear from the TDS deducted by the banks from the earning of the appellants.

9. Countering the submission of the Advocate, learned SDR submits that as is clear from the allegation made in the show cause notice that the gross amount of "payout" given by the banks to the appellants stands specified. It is his submission that it is the gross amount of "payout" paid to the appellant which is chargeable to service tax.

10. We note from the show cause notice as also from the impugned order passed by the authorities below that the problem has not been addressed from the above angle. The legal issue stands clarified by various orders of the Tribunal that if the commission earned by the appellants stands shared by him with its customers, the same is liable to service tax in its entirety. However,

if ~~the~~ separate commission is given to the assessee as also to the customers by the banks, the commission given to the customers cannot be said to be the part of the value of the services being rendered by the assessee.

11. The above factual position is not very clear, inasmuch as the show cause notice has relied upon the certificate from the banks giving quantum of total payout without indicating as to whether the entire payout was received by the appellants or only a part was received by the appellants or other part was received by the customers of the appellants. The above position would become clear from the TDS certificate issued by the bank, which would admittedly relate to the quantum of commission received by the assessee themselves. Inasmuch as neither of the authorities below have verified the commission amount stated in the TDS certificate, which we think would be the correct basis for arriving at the correct value of the services rendered by the appellants, we deem it fit to set aside the impugned order and remand the matter to the original authority for verification of the correct value of the services rendered by the appellants, based upon the TDS certificate issued by the banks. If need be, the lower authorities would be at liberty to seek clarification from the banks based upon which he would decide the matter.

12. At this stage, we also note that the appellants during the course of proceedings before the lower authorities claimed the benefit of Notification No.25/04-ST dt.10.9.2004, which does not stand discussed by them ~~them~~. Inasmuch as the matter is being

remanded to the adjudicating authority he would pass order on the appellants' claim of exemption in terms of Notification No.25/04.

13. Both the appeals are allowed by way of remand.

(Pronounced in the open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(MATHEW JOHN)
MEMBER (TECHNICAL)

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