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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/559, 59/2007 - CU[DB], ST/375/2008 Date **07/04/2011**

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

To :
M/S GALAXY DATA PROCESSING CENTRE,JODHPUR
134-135,BHAGAT KI KOTHI JODHPUR (RAJ)

M/S GALAXY DATA PROCESSING CENTRE,JODHPUR Appellant

Vs

C.C.E. JAIPUR II **ST/112-114** Respondent

I am directed to transmit herewith a certified copy of **Final order No.** **2011** **CU|DB|** dated 18.01.11 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
MR.OM P.AGARWAL & CO.
56, SECTION 7, N.P.H ROAD, JODHPUR(RAJ)

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. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file
15. M/s Business Information processing Service
128, Vidyut Nagar, B Queen's Road
Jaipur. (Raj)

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
DIVISON BENCH
Service Tax Appeal No.ST/59/2007 with ST/CO/277/08

(Arising out of Order-in-Appeal No.654 (HKS)/ST/JPR-II/2006 dated 23.11.06 passed by the CCE (A), Jaipur)

For approval and signature:

Hon'ble Mrs.Archana Wadhawa, Member (Judicial)
Hon'ble Mr.M.Veeraiyan 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?	No

CCE, Jaipur — Appellant

Vs.

M/s.Galaxy Data Processing Centre — Respondent

<u>Service Tax Appeal No.ST/559/2007</u>

M/s.Galaxy Data Processing Centre — Appellant

Vs.

CCE, Jaipur — Respondent

<u>Service Tax Appeal No.ST/375/2008</u>

(Arising out of Order-in-Review No.6/2008 (ST) dated 28.02.08 passed by the CCE, Jaipur)

M/s.Business Information Processing Services — Appellant

Vs.

CCE, Jaipur — Respondent

Present for the Appellant: Shri Sonal Bajaj, SDR and vice versa
Present for the Respondent: Shri O.P.Agarwal, Advocate and Shri
Shri K.Kant, Advocate and vice versa

Coram:Hon'ble Mrs.Archana Wadhawa, Member(Judicial)
Hon'ble Mr.M.Veeraiyan, Member (Technical)

Date of Hearing/Decision: 18.01.2011

Final **ORDER NO.** ST/112-114/11

PER: M.VEERAIYAN

1.1 Appeal No.59/07 is by the department against the order of the Commissioner (A) No.654 (HKS)/ST/JPR-II/2006 dated 23.11.06 by which the order of the original authority No.4857/ST/06 dt.14.6.06 was set aside. Cross objection No.277 of 2008 is by M/s.Galaxy Data Processing Centre in connection with the above appeal.

1.2. Appeal No.ST/559/07 is by M/s.Galaxy Data Processing Centre against the revision order of the Commissioner No.04/JP-II/2007-Sevice Tax dt.24.7.07, by which the order of the original authority no. dt.14.6.06 was revised by imposing a penalty of Rs.4,89,420/-.

1.3. In another words, the appeal No.ST/59/07, the cross objection No.277 of 2008 and the appeal No.ST/375 of 08 emanated from the order of the original authority dated 14.6.06.

2. Appeal No.ST/375 is by M/s. Business Information against the revision order of the Commissioner by which order of the original authority dt.27.7.07 which dropped the proceedings initiated against them was set aside and the order was revised confirming the demand of service tax along with interest and imposing penalties under sections 76, 77, and 78 of the Finance Act, 1994.

3. Heard both sides. As the issue involved in the above appeals are identical, the appeals are disposed by a common order.

4.1 The facts of the case relating to appeals by M/s.Galaxy Data Processing are as followings:-

(a) The appellant was given one order by Rajasthan State Electricity Board (RSEB) for computerization of energy billing and related MIS, relevant formats, performas and information. For carrying this order, the appellant developed and designed software, fed data into computer and processed such input data with the help of own developed software and generated 56 reports, including energy bills and other adhoc reports as was required by RSEB. The charges paid by the RSEB included for all these works including for designing and development of software, and as per order, the software so developed by the appellant later on, became the property of the RSEB.

(b) A show cause notice 25.4.05 was issued alleging that the services rendered by them amounted to business auxiliary services and service tax amounting to Rs.4,89,420. was payable and the penalties were leviable.

(c) The original authority confirmed demand 4,89,420/- along with interest and imposed equal amount of penalty under section 78.

(d) On appeal by the party, the Commissioner (A) held that the service rendered is in the nature of information technology service which is not included under the category of business service accordingly set aside the ordser of the original authority. The department is in appeal against the said order of the Commissioner(A) setting aside the order of the original authority confirming the demand and imposing penalty.

Meanwhile, the commissioner issued notice dated 12.0.07 proposing imposition of penalty under section 76 of the Finance Act as well. He accordingly passed the order dated 24.12.07 by which he imposed penalty of Rs.4,89,420/-. The party is in appeal against this order.

4.2 The relevant facts of the case relating to the appeal ST/375/08 filed by Information processing services is as follows:

The appellant undertook works for M/s.,JVVNL and PHD in connection with preparation of energy bills and water bills. The original authority vide order dt.27.2.07 dropped the proceedings initiated under show cause notices 3.11.05 and 10.2.06, accepting the plea of the party that the services rendered by them come under the category of information technology services which are not covered under business for the period prior 1.5.06. Commissioner passed the impugned order revising the order of original authority by demanding service tax of Rs.14,30,320/- along with interest; he also imposed penalty of Rs 14,30,320/- under section 78 also a penalty of Rs.1000 under section 77 of the act. Against this order in revision, the party is in appeal.

5.1. Ld Advocate, on behalf of the assesses submit that they have merely undertaken Computer enabled services of data processing, and generation of reports and bills and the same clearly come under the category of information technology services which are not covered under business auxiliary services for the period prior 1.5.06. The said service has been rendered after developing software as per the requirement of their customers. The assesses have not undertaken any service on behalf of their clients. Considering the nature of dispute , the invocation of extended period and imposition of penalties are not justified.

5.2. He relies on the following decisions, in support of his submissions.

(a) Dataware Computers & Ors vs. CCE & CST (Appeals), Guntur reported in 2008 (87) ELT 325 (CESTAT0-Bang)

(b) CCE, Hyderabad vs.Deloitte Tax Services India Pvt.Ltd. reported in 2008 (11) STR 255 (Tri.-Bang.)

(c) M/s.Cognizant Technoogy Solutions India Pvt.Ltd. vs. Commissioner, LTU, Chennai reported in 2010-TIOL-CESTAT-MAD.

6. Ld SDR reiterates the finding and reasonings of the Commissioner in his orders in revision.

7.1. The definition of "business auxiliary services" which came into effect from 1.7.2003 before and after 1.5.06. are as follows:

Before 1.5.2006

The "Business Auxiliary Service" means any service in relation to, —

(i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or

(ii) promotion or marketing of service provided by the client; or

(iii) any customer care service provided on behalf of the client; or

(iv) any incidental or auxiliary support service such as billing, collection or recovery of cheques, accounts and remittance, evaluation of prospective customer and public relation services.

and include any information technology service.

Explanation — For the removal of doubts, it is hereby declared that for the purposes of this clause, "information technology service" means any service in relation to designing, developing or maintaining of computer software, or computerized data processing or system networking, or any other service primarily in relation to operation of computer system.

w.ef. 1.5.2006

"Business Auxiliary Service" means any service in relation to, —

(iii) promotion or marketing or sale of goods produced or provided by or belonging to the client; or

(iv) promotion or marketing of service provided by the client; or

(iii) any customer care service provided on behalf of the client; or

(iv) procurement of goods or services, which are inputs for the client; or

[Explanation — For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;]

(v) production or processing of goods for, or on behalf of the client; or

(vi) provision of service on behalf of the client; or

(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent, but does not include any information technology and any activity that amounts to "manufacture" within the meaning of clause (f) of section 2 of Central Excise Act, 1944.

[Explanation — For the removal of doubts, it is hereby declared that for the purposes of this clause, —

(a) "Commission Agent" means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person —
(i) deals with goods or services or documents of title to such goods or services; or
(ii) collects payment of sale price of such goods or services; or
(iii) guarantees for collection or payment for such goods or services; or
(iv) undertakes any activities relating to such sale or purchase of such goods or services;

(b) "information technology service means any service in relation to designing, (or developing of computer software) or system networking, or any other service primarily in relation to operation of computers systems.

7.2 It is noticed that the activities undertaken by the assessees include feeding the data provided by their clients in the computer net work system with the help of software specifically developed for the clients and generating the bills and delivering the bills and other reports to the clients. The assesses have not undertaken any service on behalf of their clients as they do not have any contact with the customers of their clients and are not issuing the bills directly to the customers of their clients. The work of data processing using custom made software deserves to be considered as Information Technology Services.

7.3 As, during the period prior to 1.5.2006, the definition clearly exclude the Information Technology Services from the ambit of "Business auxiliary services" the activities undertaken by the assessees are not taxable under the category of "Business auxiliary services".

8. In view of the above ,

a) Appeal No.ST/375 by M/s. Business Information against the revision order of the Commissioner confirming the demand of service tax along with interest and imposing penalties under sections 76, 77, and 78 of the Finance Act, 1994 is allowed. The demand of service tax and penalties imposed are set aside.

b) Appeal No.59/07 by the department against the order of the Commissioner (A) No.654 (HKS)/ST/JPR-II/2006 dated 23.11.06 is rejected.

Cross objection No.277 of 2008 by M/s.Galaxy Data Processing Centre in connection with the above appeal is also disposed off.

c) Appeal No.ST/559/07 by M/s.Galaxy Data Processing Centre against the revision order of the Commissioner No.04/JP-II/2007-

Sevice Tax dt.24.7.07 imposing a penalty of Rs.4,89,420/- is allowed and the penalty is set aside.

(Pronounced in the open court)

(ARCHANA WADHAWA)
MEMBER (JUDICIAL)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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