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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/1416/2010-1417/2010 - CU[DB] Date **19/09/2011**

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

To :
M/S PEOPLES AUTOMOBILES,
7/52, A1, JAWAHAR NAGAR BYEPASS ROAD AGRA.

M/S PEOPLES AUTOMOBILES, Appellant

Vs

C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/473-74 2011 CU[DB]** dated 14.09.2011 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. KANPUR
117/7, SARVODAYA NAGAR,
KANPUR 208005.

2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI

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
14. M/S PEOPLES AUTOMOBILES,
7/52, A1, JAWAHAR NAGAR BYEPASS ROAD AGRA.

Assistant Registrar
(Customs Appeal Branch)

TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing: 18.08.2011
Date of decision: . . .2011

Service Tax Appeals Nos.1416-1417 of 2010

[Arising out of Order-in-Appeal No.301-304-ST/Appl/Knp/2010 dated 22.06.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur].

M/s. Peoples Automobiles Ltd. Appellant

Vs.

CCE, Kanpur Respondent

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporters may be allowed to see 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?	Yes
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.

Appearance: Rep. by none for the appellants.
Rep. by Shri K.K. Jaiswal, DR for the respondent.

CORAM: **Hon'ble Smt. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Mathew John, Member (Technical)

Final Order No.ST/473-474/11/Dated: 18.08.2011

Per Archana Wadhwa:

Both the appeals are being disposed of by a common order as they arise from the same impugned order. Nobody appeared on behalf of the appellants in spite of notice of hearing having been sent to them well in advance.

2. We have carefully considered the submissions by ld. SDR, Shri K.K. Jaiswal and have gone through the impugned order.

3. As per the facts on records, the appellants are receiving commission from the banks and non-banking financial corporation for acting as their direct selling agents/authorized dealers/recovery agents. Revenue by considering the said services as falling under the category of Business Auxiliary Services w.e.f. 1.7.2003 initiated proceedings against the appellants culminating into orders passed by the authorities below confirming the demand and imposing penalties. The order of the original adjudicating authority was upheld by the Commissioner (Appeals), hence the present appeals.

4. We find that as regards the nature of the services being covered by Business Auxiliary Services, the issue is no more res integra and stands covered against the appellants by various decisions of the Tribunal. The appellate authority has referred to and relied upon the Tribunal's decision in the case of Malpani Finance Vs. CCE, Bhopal reported in 2008 (10) STR 0300 (Tribunal-Delhi), M/s. Auto World Vs. CCE, Allahabad reported in 2008 (012) STR 0074, M/s. Bridgestone Financial Services Vs. CCE reported in 2007 (008) STR 0505 (Tribunal-Delhi) as also on the decision in the case of M/s. Roshan Motors Ltd. Vs. CCE, Meerut reported in 2009 (13) STR 667 (Tribunal-Delhi). The ratio of all the said decisions is to the effect that the direct sales agents to the banks for arranging the finance to their prospective customers fall under the category of Auxiliary Business. As such, we do not find any merit in the appellant's plea that the services being provided by them are not taxable.

5. However, the appellants have claimed the benefit of exemption notification no.6/2005-ST dated 1.3.2005, which provides exemption to taxable services of aggregate value not exceeding four Lakhs Rupees in a financial year from the whole of the service tax leviable thereon. This limit was increased in subsequent years. However, the lower authorities have not extended the benefit of the above exemption notification on the ground that

the exemption is not available inasmuch as the taxable services are being provided under a brand name or trade name of another person i.e. ICICI Bank and HDFC Bank in which case they are hit by the First Proviso to the notification.

6. We note that the First Proviso to the Notification is to the effect that nothing contained in the notification shall apply to taxable services provided by a person under a brand name or trade name whether registered or not of another person. The said Proviso hits the taxable services, when not being provided by a person under his own name, but are being provided by him under the brand name or trade name of another person. The lower authority's reasoning that such services being provided by the appellant to the banks are by using their brand name. We do not find any merits in the above contentions of the Revenue. Admittedly, the services are being provided by the appellant to the banks or other non-banking financial institutions. Such services are being provided under their own name. The banks are only the recipients of the said services. It cannot be said that the services are being provided to the banks as recipient of the services by using the recipient's brand name. The notification does not put restriction with reference to the brand name of the service recipient but the same debars the benefit to the service provider, if the brand name or trade name of another person is being

used as service provider. As such, we hold that the appellants are entitled to the benefit of Notification No.6/2005-CE. On this ground, we set aside the confirmation of the demand of duty against them and remand the matter for readjudicating liability for each financial year based on our rulings above.

(Pronounced in open court on 15/9/11.)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member (Technical)

Ckp.