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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/668 /2007 - CU[DB]
ST/162 & 276/08

Date **23/09/2011**

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

To :
M/S THE FINANCIERS
689, 9TH C ROAD, SARDARPURA JODHPUR, RAJ.

M/S THE FINANCIERS Appellant
Vs
C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/482-84 2011 CU|DB|** dated 19.09.2011 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. JAIPUR II
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.ALOK KOTHARI
A-92, MANISH MARG, NEMI NAGAR,
GANDHI PATH, VAISHALI NAGAR, JAIPUR

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 YRG Services
1 Tej mandi Station Road
Kush marg.
Alwar. (Raj)

Assistant Registrar
(Customs Appeal Branch)

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

DIVISION BENCH
Court-IV
Service Tax Appeal No.668 of 2007
Service Tax Appeal No.162 of 2008
Service Tax Appeal No.276 of 2008
Date of Hearing/Decision: 20.07.2011

(Arsing out of Order-in-Appeal No.500(HKS)ST/JPR-II/2007 dt. 19.7.07 and No.203(RKS)ST/JPR-I/2007 dt.25.11.07 and No.12(RKS)ST/JPR-I/2008 dt.11.2.08 passed by the CCE(A),Jaipur-II)

For approval and signature:

Hon'ble Mr.Ashok Jindal, 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?	Yes
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

M/s. The Financer's — Appellant
M/s.Y.R.G.Services

Vs.

CCE, Jaipur-II & I — Respondent

Present for the Appellant: Shri Alok Kothari, Advocate
Present for the Respondent: Shri Sonal Bajaj, SDR

Coram: Hon'ble Mr.Ashok Jindal, Member (Judicial)
Hon'ble Mr.Mathew John, Member (Technical)

Final **ORDER NO.** ST/482-484/11

PER: ASHOK JINDAL

The Appeal No.ST/668/07 is filed by the appellants against the impugned order for confirmation of demand on account of non payment of service tax on the amount received as commission on the services which come under business auxiliary services alongwith interest and equivalent amount of penalty under Section 78 and penalties under sections 75A, 76 & 77 of Finance Act, 1994. The period of dispute is from July,2003 to February, 2005.

2. Another appeal No.ST/162/08 is filed by M/s.Y.R.G.Services for confirmation of demand of service tax alongwith interest and equivalent amount of penalty under Section 76 of Finance Act, 1994 for the same activity. The period of dispute is from 1.4.2005 to 31.3.2006.

3. Appeal No.ST/276/08 is filed by M/s.Y.R.G.Services ~~for~~ is against demand of service tax alongwith interest and penalties under sections 76 7 77 of Finance Act, 1994.

4. As the issue in all these appeals is common, therefore, all the appeals are taken up and are being disposed of by this common order.

5. The brief facts of the case are that the appellants are direct selling agent of various banks like Citi Bank and ICICI Bank. They are facilitating the customers for getting the loans from the bank. For providing these services the appellants received certain commission from the bank. It was observed that the appellants are ~~running~~ rendering business auxiliary services and are liable to pay service tax service tax on these activities. Therefore, the show cause notices were issued which were adjudicated and the demands were confirmed and penalties were imposed as above by the both authorities. Aggrieved by the said order, the appellants are in appeals before us.

6. Learned Advocate appearing for the appellants submits that the appellants have already paid service tax demand alongwith interest and they are not contesting the demand of service tax in these cases. They are only contesting the penalties imposed on them. He further submitted that the main activities of the appellants were that they were procuring the documents from the bank for verification of the loan documents of the customers and ~~after~~ submitting verification reports to the banks. They get certain commissions from the banks. ~~As they do~~ They thought that they did not fall under the category of business auxiliary services, therefore they ~~could~~ did not get ~~register~~ registered with the department. Therefore, they ~~could~~ did not pay service tax on these activities. Therefore, the appellants were under bonafide belief ~~that~~ and the benefit of section 80 of the Finance Act, 1994 be given to them and penalty be dropped against them. He further submitted that the appellants sought clarification for liability of service tax from the Directorate General of Service Tax on 8.4.2004 relating to their activity but did not get response from the department. He further submitted that as the appellants are under bonafide belief that their activities are not liable to tax therefore, the various penalties are not imposable on the appellants. To support his contention, he relied upon the decision of the Tribunal in the case of Nirav Industries vs. CCE, Rajkot reported in 2009 (16) STR 69, CCE, Tirunelveli vs. G.V. Associates reported in 2011 (23) STR 147 and Akar Motors vs. CCE, Daman reported in 2010 (20) STR 481.

7. On the other hand, learned SDR reiterating the impugned order submitted that the appellants were aware ~~of~~ that their activity is liable to tax, therefore, they are liable to pay penalties.

8. After hearing both sides, we find that the appellants are not disputing the service tax liability and are praying for waiver of penalty under bonafide belief. From the records, we have seen that the appellants sought clarification from the Directorate General of Service Tax vide their letter dated 8.4.2004. ~~Therefore~~ but, the clarification was not given by the department. Therefore, the appellants were under bonafide belief that their activities are not liable to tax. In the circumstances, the benefit of section 80 be given to the appellants. Accordingly, following the judgments cited by the learned Advocate, we give benefit of section 80 that the appellants are under bonafide belief that their activity is not liable to service tax. Therefore, we drop the penalties against the appellants.

9. With these observations, the appeals are disposed of.

(Pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(MATHEW JOHN)
MEMBER (TECHNICAL)

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