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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/777 /2007 - CU[DB]   Date **12/07/2011**

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

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

C.C.E. LUDHIANA Appellant
Vs
M/S SUVIDHA FINANCE Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/276/ 2011 CU[DB]** dated 08.07.11 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
M/S SUVIDHA FINANCE
RAILWAY
CHOWK,SANGRUR,(PB)

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 (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
(Customs Appeal Branc

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
COURT NO. II

Date of Hearing : 28.6.2011

Service Tax Appeal No. 777 of 2007

[Arising out of Order-in-Appeal No. 300/CE/LDH/2007 dated 9.8.2007 passed by the Commissioner (Appeals), Central Excise, Jalandhar (Chandigarh)]

Coram:
Hon'ble Shri D.N. Panda, Member (Judicial)
Hon'ble Shri Mathew John, Technical Member

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

CCE, Ludhiana — Appellant

Vs.

M/s Suvidha Finance — Respondent

Appearance:

Appeared for Appellant : Shri Fateh Singh, SDR
Appeared for Respondent : Shri Mayank Garg, Advocate

Coram:
Hon'ble Shri D.N. Panda, Member (Judicial)
Hon'ble Shri Mathew John, Technical Member

Final Order No. ST/276/11 .... dated 8.7.11

Per **D.N. Panda :**

Revenue came in Appeal being aggrieved by the first Appellate order holding that refund is admissible to the Respondent. Facts on record throws light that the Respondent was engaged by

ICICI Bank Ltd. for ~~funding loans~~ sourcing customers to avail housing finance from ICICI, HFC. Revenue found that the Appellant was remunerated by ICICI, HFC in pursuance of the terms of understanding between the bank and the Respondent for the service provided to the Bank principal. With this background, Show Cause Notice was issued for the period from 1.10.2004 to 31.3.2005 asking the Appellant for discharge of Service Tax liability of Rs.30,337/- with other consequences of law to follow as a business promotion service provider.

2. The Respondent failed before the Adjudicating Authority for which it carried the matter to the first Appellate Authority who granted relief to the Respondent on the ground that the Respondent was a sourcing agent to the bank and such service being taxable with effect from 10.9.2004, but the Respondent was not liable to Service Tax. To do so, the ld. Appellate Authority found support of Notification No.14/2005 dated 10.9.2004. He agreed with the Respondent and ~~rejected~~ refund claim was allowed. Revenue was of opinion on the facts as stated above, at the outset that the nature of the service provided was misconstrued by the Appellate Authority to hold that refund is admissible to the Respondent which is not permissible by law. Having such view, Revenue came in Appeal before the Tribunal challenging the first Appellate order.

3. The ld. DR appearing for Revenue, supports the order of the Adjudicating Authority.

4. On the other hand, ld. Counsel for Respondent submits that the Notification No. 14/2004-ST dated 10.9.2004 is applicable to the Respondent for which the first Appellate decision is correct in law.

5. Heard both sides and perused the record.

6. We examined para-2 of the Show Cause Notice which brings out the modus operandi of the Respondent who cater to the need of the financing banks. Such an activity of the Respondent characterises it as service provider to the financing bank. Nowhere the Respondent has pleaded that it was collaborator to the financing bank to serve clients of the Bank concerned. We noticed that the moment service was provided by the Respondent to the funding bank service of the bank begins to serve clients of the later. These are two independent services. While the first one was of the nature of promoting market, the second service was banking or other financial service dealt by two distinct classified entries in the scheme of levy of service tax. This entire transaction comprises two parts. In the first part of the transaction the Respondent traces prospective borrowers to serve the purpose to retail marketing of finance by the financing bank. Thereafter, the service of funding bank begins clearly delineating both transactions. This appeal is not concerned with the other consequences that follows in the second transaction. Financing bank becomes recipient of service provided by the Respondent to provide further service to its borrowers. This demarcated and distinct feature of the service brings the

Respondent to the fold of law for the reasons that it was a service provider to the bank but not a service provider on behalf of the ~~same~~ bank to its clients.

7. We do not find anything in Appeal record to come to the rescue of the Respondent since no tripartite agreement was executed among the Respondent, financing bank and the borrower nor there is any letter of appointment in that regard. There is no role of the Respondent to discharge any obligation to the prospective borrowers of the Bank. Therefore the material fact suggests that there was no provision of service to third party by the Respondent on behalf of the financing bank. The first Appellate order proceeded under misconception of law misconstruing the notification benefit.

8. We have also examined the notification, The notification categorised the claimants in two parts. The first part appears to be dealing with the commercial concerns who were not the entities covered by second category embraced by the notification. This Respondent neither falls in the first category nor the second category because there was no provision of service made on behalf of the bank to the clients of the bank in absence of evidence to the contrary or no obligation of the Respondent to the client of the bank is on record. It was only a service provider to the funding banks. So also whether the prospective borrower is funded or not that is immaterial for the Respondent since Respondent has no concurrent

obligation to the clients of the same. When there is de-link of the entire transaction splitting into two different aspects, each aspect needs examination under touchstone of law. The transaction of the Respondent brought it to the fold of law.

9. In view of the above, there is no scope to approve the first Appellate order which is erroneous. Accordingly, Revenue Appeal is allowed.

(Dictated & pronounced in open Court)

(D.N. Panda)
Member (Judicial)

(Mathew John)
Member (Technical)

RM