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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/468 /2011-469 /2011, - CU[DB] Date **05/01/2012**
ST/S/895-96/11

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

To :
M/S TIMES CREDIT SERVICES,
12A, 2ND FLOOR, DAYAL COMPLEX, MP NAGAR
ZONE-II, BHOPAL (M.P.)

M/S TIMES CREDIT SERVICES, Appellant
Vs
C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/A/12-13 2012 CU[DB]** dated 17.11.11 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to ~~Service Tax~~**

Alongwith Stay Order No ST/S/27.-28/12

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.SANDEEP MUKHERJEE & ASSOCIATES,
CHARTERED ACCOUNTS, B-62, KASTURBA NAGAR, BHOPAL 462024

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-3
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 TIMES CREDIT FINANCIAL SERVICES,
12A, 2ND FLOOR, DAYAL COMPLEX, ZONE-II, M.P.NAGAR, BHOPAL (M.P.)

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

ST/Stay No.895/2011 in ST/Appeal No.468/2011

(Arising out of order in appeal No.188/BPL/2010 dated 9.12.2010 passed by the Commissioner of Central Excise (Appeals), Bhopal)

Date of Hearing: 17.11.2011

M/s Time Credit Services — Appellants

Vs

CCE, Bhopal — Respondent

ST/Stay No.896/2011 in ST/Appeal Nos.469/2011

M/s Time Credit Financial Services — Appellants

Vs

CCE, Bhopal — Respondent

Appeared for the Appellant: Shri Sandip Mukherjee, C.A
Appeared for the Respondent: Shri S.N. Singh, DR

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

Stay order No. ST/S/27-28/12-CUS
Final ORDER No. ST/A/12-13/12-Cus

Per Mathew John:

There are two stay petitions in two appeals being considered in these proceedings. Both arose out of the same impugned order. So they are being considered together for disposal. After hearing both the parties for some time, we find that the matter involves classification of service and the Commissioner (Appeals) has classified the services under a category different from that in adjudication order. So the impugned order is not maintainable. So we waived the requirement of pre-deposit and we proceed to dispose of the appeals itself.

2. The appellants are engaged in the business of verification of contact points of the customers of ICICI Bank. During the period 1.5.06 to 31.12.2007, they had not paid any service tax for such services rendered to ICICI Bank. The Revenue was of the view that the services rendered by the appellants should be classifiable under business auxiliary services or business support services. Since they did not pay service tax for the period 1.7.03 to 31.12.07, Revenue issued a show cause notice proposing to demand service tax, interest and penalties. The notice was adjudicated confirming an amount of Rs. 30,84,472/- against Times Credit Financial Services and Rs. 16,54,744/- against Times Credit Services. Further interest under Section 75 and penalties as per Sections 77 and 78 were imposed.

3. Aggrieved by the order, they filed appeal with the Commissioner (Appeals). The Commissioner (Appeals) held that the services rendered by the appellant appropriately classifiable under "Business Support Services" as defined in the Financial Act, 1994 w.e.f. 1.5.06. However, he extended the benefit of cum tax realization. But for this benefit, the appeals filed by the appellants were rejected by him. Aggrieved by the order of Commissioner (Appeals), the appellants have filed these appeals before the Tribunal.

4. The Counsel for the appellants submits that the Commissioner (Appeals) confirmed tax under 'business support services' whereas in the order-in-original it has been taxed under the head 'business auxiliary service' and therefore, he has travelled beyond the order in

original without putting the appellant on notice to adopt a classification that was suggested in the Show Cause Notice but not approved in the adjudication order. He also submits that the services rendered by the appellants do not amount to evaluation of prospective customers. He relied on the decision of the Tribunal in the case of Rakesh Porwal & Associates Vs CCE Jaipur 2011 (24) STR 408 (Trib. Del). He submits that this a matter involving interpretation of law and therefore, extended period of 5 years cannot be invoked for issue of the demand alleging that there was suppression on the part of the appellants.

5. Since the Commissioner (Appeals) has adopted a classification without hearing the submission of the appellant on the matter, we set aside the impugned order and remit the matter to the Adjudicating Authority to allow the appellants to make submission on the issue why classification under either "Business Auxiliary Service" or "Business Support Service" is not proper and decide the matter afresh after affording reasonable opportunity of hearing to the appellants. The adjudicating authority may consider the views of the Commissioner (Appeals) in the impugned order but he is not bound by it since the order is set aside.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Technical Member
MPS*

(ARCHANA WADHWA)
Judicial Member