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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/757/2008-CU[DB], ST/783/2008-CU[DB]

Dated: **11/09/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
C.C.E. KANPUR
117/7, Sarvodaya Nagar, Kanpur 208005.

C.C.E. KANPUR (Appellant)

VS

KRISHNA FINANCIAL SERVICE, (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/572-573/2012-CU[DB]** dated **29/08/2012** passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

Assistant Registrar
CUSTOMS Appeal Branch

Copy To,
1. Respondent
KRISHNA FINANCIAL SERVICE,
SHOP NO.6, 4TH FLOOR, RAMAN
TOWER, SANJAY PLACE, AGRA
(U.P.)

2. Advocate(s) / Consultant(s):
Mr. KK Anand, Adv
A-103, Defence Colony, New
Delhi – 24

3. C.D.R
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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

P.T.O

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

Date of Hearing : 29.8.2012

For Approval & signature :

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

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would 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 Department Authorities?	Yes

Service Tax Appeal No. 757 of 2008

M/s Krishna Financial Services — Appellant

Vs.

CCE, Kanpur — Respondent

Appearance :
Appeared for Appellant : Shri Hrishikesh, Advocate
Appeared for Respondent : Shri N. Pathak, A.R.

Service Tax Appeal No. 783 of 2008

CCE, Kanpur — Appellant

Vs.

M/s Krishna Financial Service — Respondent

[Arising out of the common Order-in-Appeal No. 333/ST/APPL/KNP/2008 dated 12.7.2008 passed by the Commissioner (Appeals) of Central Excise, Kanpur)

Appearance:
Appeared for Appellant : Shri N. Pathak, A.R.
Appeared for Respondent : Shri Hrishikesh, Advocate

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

Final Order No. ST/A/572-573/12-Cus dated............

Per Archana Wadhwa :

Both the appeals one filed by the assessee and the other by the Revenue are being disposed of by a common order as they arise out of the same impugned order passed by Commissioner (Appeals). Revenue being aggrieved with dropping of penalty by Commissioner, in terms of Section 80 of the Finance Act, 1994, has preferred the present appeal

2. We have heard both sides duly represented by Shri Hrishikesh, Advocate for the appellant and Shri N. Pathak, ld. A.R. for Revenue.

3. As per the facts on record the appellant has entered into an agreement with M/s ICICI bank for providing services relating to marketing of products under "retail finance business" and for sourcing the business. The demands stands confirmed against the appellants for the period 2004-05 and 2005-06 on the findings that they have rendered services only under the category of business auxiliary service. The demand stands raised by way of issuance of show cause notice dated 13.2.2007.

4. The appellant's contention is that during the relevant period, there was confusion about the classification of said services, it was not

clear as to whether the said services being provided by them are liable to service tax either under the category of business auxiliary service or under the category of business support service, which was introduced with effect from 1.5.2006. He submits that in such a scenario there cannot be any mala fide on the part of the appellant so as to invoke the longer period of limitation. However, he fairly agrees that part of the demand would fall within the limitation period and he is not disputing the same. He also relied upon the Tribunal's decision in the case of **Brij Motors Vs. CCE** – 2012 (25) STR 489 (Tri.-Del.) wherein, while upholding the identical services to be falling under the category of business auxiliary services, benefit of limitation was extended to them.

5. Ld. A.R. appearing for the Revenue submits that the appellants having not got themselves registered, has suppressed the said fact from the Revenue and the longer period should be invoked against them.

6. We find that in the above referred decision of the Tribunal in the case of Brij Motors, it stands held as under:

> "**14.** The period involved in this appeal is 20-10-2004 to 18-12-2007. The Show Cause Notice was issued on 21-2-2008. As can be seen from the discussions above the matter was being interpreted by judicial forums in different ways as may be seen from the decisions quoted by the Appellants. The Higher Courts have been taking the view that in such situations the extended period of time cannot be invoked for raising demand. Even in the case of *Bridgestone Financial Services* the Tribunal has given the benefit for such reason. So we are of the view that the demand in this case can be sustained only to the extent covered in the normal period of limitation. In such a situation penalties are not imposable either."

7. As is seen from the above, Tribunal has taken note of the fact that different interpretations was being given by judicial forums to the classification of the said services. In such a case, the extended period of time cannot be invoked. By adopting the ratio of the above decision, we hold that the demand beyond the period of normal limitation period is not sustainable. The lower authority would quantify the demand falling within the limitation period. As regards the Revenue's appeal, the same is against that part of the impugned order vide which benefit under Section 80 of Finance Act 1994 stands extended to the assessee. As we have also held that there was no mens rea on the part of the assessee, thus limiting the demand within the period of limitation, we are of the view that benefit of Section 80 stands rightly extended by Commissioner (Appeals). Revenue's appeal is accordingly rejected. Both the appeals are disposed of in the above manner.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM