FAX : 011-26108426

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

To

Dated: **29/11/2012**

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/719-721/2012-CU[DB]**, MISC Order No. **ST/MO/428-433/2012** dated **08/11/2012**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar(CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	ST/COD/4141/2012	ST/162/2011	**ADARSH CO-OPERATIVE BANK LTD.** (EARLIER, MADHAV NAGRIK SAH. BANK LTD.), HIRAN MAGRI BRANCH, UDAIPUR. (RAJASTHAN)
2	ST/COD/4143/2012	ST/163/2011	**ADARSH CO-OPERATIVE BANK LTD.** (EARLIER, MADHAV NAGRIK SAH. BANK LTD.), SURAJPOLE BRANCH, UDAIPUR. (RAJASTHAN)
3	ST/COD/4145/2012	ST/164/2011	**ADARSH CO-OPERATIVE BANK LTD.** (EARLIER, MADHAV NAGRIK SAH. BANK LTD.), FATEHNAGAR BRANCH, UDAIPUR. (RAJASTHAN)

	Name and Address of Respondent
4	**C.C.E. JAIPUR II** N.C.R.Building, Statue Circle, "C" Scheme, Jaipur 302005.

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Other Appellants and Respondents as per Annexure

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Copy To

5<u>Advocate(s) / Consultant(s)</u>:

Bipin Garg
B-1/1289, A - Vasant Kunj,
New Delhi
Delhi

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P-7.0.

6 Bar Association, CESTAT, Delhi

7 Director Publications, Customs, Excise. I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

12 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

13 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

14 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

15 C.D.R. **16** Office Copy **17** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO. 3

Service Tax Appeal No. 162 - 164 / 2011
Service Tax /ROA / 4140, 4142 & 4144 / 2012
Service Tax /COD / 4141, 4143 & 4145 / 2012

Date of Hearing : **08/11/2012**

[Arising out of Order-in-Appeal No. 423 to 425 (CB) ST/JPR-II/2010 dated 20.10.2010 passed by the Commissioner of Customs & Central Excise (Appeals), Jaipur]

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the 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? : 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? : Yes

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ADARSH CO-OPERATIVE BANK LTD. Applicant

Vs

C.C.E. JAIPUR II Respondent

Present for the Appellant : Ms. Sukriti Das, Advocate
Present for the Respondent : Shri N. Pathak, DR

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)
Misc order No. ST/M/428-433/12-Cus
Final **ORDER NO.** ST/A/719-721/12-Cus

Per Archana Wadhwa (for the Bench):

All the three ~~appeals~~ matters are disposed of by a common order as the issue is identical.

2. It is seen vide stay order No. ST/667-669/11 dated 19.9.11, the appellant was directed to deposit 25% of the Service Tax confirmed against them within a period of 8 weeks from that date. As the appellant had not deposited the said amount, the appeals were dismissed for non-compliance vide Final Order No. Service Tax/629-631/11 dated 5.12.11.

3. The present ROA application stand filed by the applicant along with COD application for condoning the delay in filing the restoration of appeal application on the ground that the amounts were deposited by the applicant on 4.11.2010 i.e. the entire amount of Service Tax was deposited even before passing of stay order. However, the said fact could not be brought to the notice of the Bench at the time of passing of stay order and the subsequent dismissal of appeal. The contention of the learned advocate is that inasmuch as the entire amount of Service Tax was deposited, the dismissal of appeals was not called for.

4. We have seen the challans indicating deposit of entire amount of Service Tax. In view of the above, we recall the order of dismissal of

appeals and restore the appeals to their original numbers. COD applications as also ROA applications are allowed in the above terms.

5. At this stage, learned advocate fairly agrees that the issue stand decided by the Tribunal in the appellants own case i.e. in the case of M/s. Madhav Nagrik Sahkari Bank Ltd. vs. Commissioner of Central Excise, Indore reported as [2012-TIOL-234-CESTAT-DEL] holding against the appellant. It stands held by the Tribunal that a bank run by co-operative society is also liable to pay Service Tax under the category of 'Banking and other Financial services'. However, while dealing with the imposition of penalties, the Tribunal has observed that penalties under section 76 and section 78 of the Finance Act cannot be imposed together. By observing so, penalty under section 78 was set aside. ~~He~~ She therefore, prays for adopting the said decision for deciding the present appeals also.

6. Learned DR agrees with the above proposal.

7. We find that the Service Tax stand confirmed against the appellant in the present three appeals on the ground that they have provided services falling under the banking and financial services. The appellants contention that being a bank run by co-operative society, they would not be liable to pay Service Tax. The said contention of the applicant was considered by the Tribunal in the above referred decision of Madhav Nagrik Sahkari Bank Ltd. and was not found favour with. Accordingly, by following the above

decision, we hold that the appellants are liable to pay Service Tax. The demands are accordingly, confirmed.

8. As regards penalties, we find that the lower authorities have imposed the same under section 76 as also under Section 78 of the Finance Act. The Tribunal in the earlier matter, by taking note of decision of Hon'ble High Court of Punjab and Haryana in the case of First Flight Couriers Ltd. [2011 (22) STR 622 (P&H)] has observed that simultaneous penalties under section 76 and 78 are not warranted, Accordingly, penalty under section 78 was set aside. In terms of said decision we while upholding the penalty under section 76 and 77, set aside the penalty imposed under section 78 of the Finance Act, 1994.

9. All three COD applications, ROA applications and appeals are disposed of in the above manner.

(Pronounced in the open Court)

Archana Wadhwa
(Judicial Member)

Mathew John
(Technical Member)

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