IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Appeal No. ST/1644/2011-ST(SM)

[Arising out of Order-in-Appeal No. 313(DKV)ST/JPR-I/2011 dated 27.07.2011, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Jaipur-I].

Shri Mahendra Singh Karnawat **....Applicants**

Vs.

C.C.E. Jaipur-I **....Respondent**

Appearance:

Shri Pulkit Kapoor, Advocate for the Appellants
Shri M.R. Sharma, DR for the Respondent

CORAM:
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 23.01.2017

FINAL ORDER NO. 51844/2017-ST(SM)

Per V. Padmanabhan:

The present appeal is directed against the order in appeal dated 18.11.2010 passed by the Commissioner (A) Jaipur. The appellant is working as a finance broker. Nature of activity is that he provides the platform for persons who temporary have surplus funds for lending to persons who need money for running their business temporarily. In this process, the appellant located customers who want to take loan and introduced them to the persons willing to lend. Once the deal takes place between the lender and borrower, the appellant receives commission from the borrower for the transaction.

2. Revenue was of the view that the activity entered into by the appellant was covered within the description of "Business Auxiliary Services" classified under section 65 (105)(zzb). Accordingly, show

cause notice was issued and the order in original confirmed service tax demand to the extent of Rs.2,22,284/-. When the issue was challenged before the commissioner (A) the appellant did not get relief and consequently filed the present appeal.

3. With this background I have heard Shri Pulkit Kapoor, Advocate for the Appellants and Shri M.R. Sharma, DR for the Respondent.

4. Ld. Counsel for the appellant submits that the activity of the appellant is not covered within any of the sub-clauses of "Business Auxiliary Services". He further submits that the consideration has been received from the borrower through the services were provided to the lender. Accordingly, the activity cannot be classified under "Business Auxiliary Services". He further placed reliance on the decisions of the Tribunal in the case of ***Fulchand Tikamchand Vs. CCE Nagpur 2016-TIOL-502-CESTAT-MUM.***

5. Ld. DR supported the impugned order.

6. The contention of the appellant is that the activity of the appellant as a finance broker is not covered by any of the clauses of the Business Auxiliary Services which are:

a) Promotion or marketing or sale of the goods produced was provided by the client.
b) Promotion or marketing of services provided by the client; and
c) Commission agent.

7. I find that ab identical issue stand decided by the Tribunal in the case of ***Fulchand Tikamchand*** cited by the appellant. The Tribunal has held as follows:

"8. It is seen from the description of the activity that the appellant does not enter into any contract, written or implied, with either the financier or the borrower; nor is there any responsibility cast upon the appellant in the event of default on the part of financier or the borrower. Accordingly, the appellant fails the test of description as agency or agent for classification as commission agent under section 65(19) of Finance Act, 1994. There is no force in the argument that rendering any activity that fall in section 65(19)(vii) would classify the appellant as commission agency when section 65(19)(vii) can be invoked only in relation to the preceding sub-categories.

9. The case laws relied upon by the adjudicating authority stand on a different footing inasmuch as the providers therein received commission from clients whose commercial outputs were placed with final consumers. The appellant, on the other hand, receives commission from the borrower who does not have either a product or a service to place in the market. The consideration is, thus, not connected with the sale of a product or service belonging to the person who makes over the consideration. The appellant, therefore, does not find fitment in section 65(19)(vii) as provider of business auxiliary service.

10. The circular relied upon in the impugned order appears to have been mis-applied by the adjudicating authority; the circular clarifies that automobile dealers getting commission from finance companies for promoting or marketing their auto loan packages among car buyers are taxable. The activities of the appellant may indeed benefit the various empanelled financiers with increased business but the appellant is not in receipt of any consideration from any of them. To be a commission agentthe definition requires entities to

"act on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration".

In view of an equation that is devoid of an agency relationship with the financier and rules out the provision of a service on behalf of the borrower from whom the appellant receives *consideration, the activities of the appellant are outside the ambit of business auxiliary service.*

11. Accordingly the appeal is allowed by setting aside the impugned order."

8. By following the decision of the Tribunal I hold that the impugned order is not sustainable and hence is set aside and the appeal is allowed.

[Dictated and Pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

Bhanu