IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Service Tax Appeal No.ST/1610/2011-ST [DB]

[Arising out of Order-in-Appeal No.324 (DKV) ST/JPR-I/2011 dated 05.08.2011 passed by the Commissioner (Appeals), Central Excise, Jaipur]

M/s.Amarnath Associates …Appellant

Vs.

C.C.E., Jaipur … Respondent

Present for the Appellant : Mr.Rinki Arora, Advocate.
Present for the Respondent: Mr.Sanjay Jain, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing/Decision: 06/06/2017

FINAL ORDER NO. 53948/2017

PER: B.RAVICHANDRAN

The appeal is against order dated 05.08.2011 of Commissioner (Appeals-I), Jaipur. The appellants are engaged in arranging loan for various persons from money lenders. Basically they facilitate the arrangement of loan between money lender and borrower. They get certain consideration as brokerage from the borrowers of the loan amount. The

Revenue entertained a view that such consideration is liable to be taxed under the tax entry 'Business Auxiliary service'. Accordingly, proceedings were initiated against the appellant resulted in the original order dated 22.12.2010 confirming service tax liability of Rs.3,23,333/- against the appellant. In the said proceedings, the original authority also denied cenvat credit of Rs.1,991/- as ineligible to the appellant. On appeal, the said order was upheld by the impugned order.

2. The ld. Counsel for the appellant submits that they are not promoting product or service of borrower of loan amount. Their activity is not covered by tax entry "Business Auxiliary Service". She also relied on certain decided cases in support of her submission. The ld. A.R. reiterated the findings of the lower authorities.

3. We have heard both the sides and perused the appeal records.

4. The admitted facts of the case are that the appellants are engaged in facilitating the loan transaction between the lender and borrower. For this they get some brokerage amount from the borrowers. No consideration is paid by the money lender. We note that there is no allegation to the effect that the appellants promoted the product or services of borrowers of loan amount, which can be brought under the scope of business auxiliary service in terms of Section 65 (19) of the

Finance Act, 1994. We note that similar set of facts came up for consideration by the Tribunal in Fulchand Tikamchand vs. CCE & C, Nagpur – 2016 TIOL-502-CESTAT-MUM. wherein the Tribunal held as below:-

> *"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 agent' the 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.*

5. We find that the ratio followed by above decision is applicable to the present case. Accordingly, we hold that the impugned order is not sustainable and the appellants are not liable to service tax. Regarding the denial of cenvat credit, the ld. Counsel for the appellant did not press for their case, as they are not able to produce the connected documents. Accordingly, the impugned order relating to cenvat credit will stand.

6. The appeal is disposed of in the above terms.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)	**(S.K. MOHANTY)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Anita