IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

Appeal No. ST/88292/2014

(Arising out Order-in-Appeal No. AV (70)09/2014 dated 22.04.2014 passed by the Commissioner of Central Excise & Customs (Appeals), Aurangabad)

For approval and signature:
Hon'ble Mr C J Mathew, Member (Technical)
Hon'ble Ajay Sharma, Member (Judicial)

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

H.R. Joshi — Appellant

Vs.

Commissioner of Customs, Central Excise & Service Tax, Aurangabad — Respondent

Appearance:

None for the appellant
Shri Dilip Shinde, AC (AR) for the respondent

CORAM:
Hon'ble Mr C J Mathew, Member (Technical)
Hon'ble Ajay Sharma, Member (Judicial)

Date of hearing : 18-02-2019
Date of decision : 18-02-2019

O R D E R No: **A/85355/2019**

Per: C J Mathew

This appeal of Shri H R Joshi, operator of 'petrol cum service station' in the name and style of M/s IBP Auto Services, seeks relief from order-in-appeal no. AV (70)09/2014 dated 22nd April 2014 of Commissioner of Central Excise & Customs (Appeals), Aurangabad, which has upheld the order of the lower authority that the appellant was liable to tax of ₹4,69,278/- under section 78 of Finance Act, 1994 besides imposing penalties under section 77 and 78 of Finance Act, 1994. It is seen from the records that the entire amount of tax and interest, as well as 25% of penalty as ordered by the original authority, has been paid by the appellant.

2. Though none appeared for the appellant, and who has not been represented since filing of the appeal, we take up the matter for disposal despite such absence by placing reliance on the records as well as the assistance rendered by Learned Authorised Representative.

3. It is seen that the appellant manages a 'company owned company operated' retail outlet of M/s Indian Oil Corporation Ltd and had been stocking various products manufactured by oil companies for sale. As recipient of consideration as 'commission agent', taxable under section 65 (175)(zzb) of Finance Act, 1994 read with definition under section 65(19) of Finance Act, 1994, they were liable to tax as

provided under ‘business auxiliary service’. These facts are uncontroverted. The contentions of the appellant are that the goods are subject to sales tax and hence not chargeable to service tax, that they are entitled to exemption under notification no. 13/2003-ST dated 20th June 2003, that they purchase and sell goods and that the commission thereof is not the consideration envisaged for providing of ‘business auxiliary service.’ It is also their claim that there was never any suppression, fraud, collusion or mis-statement on their part.

4. We find that the appellant had been promoting the sale of products manufactured by another entity; it was also not a mandatory function required to be performed by the appellant as manager of retail outlet. They have also chosen to remit the entire duty, tax, interest and penalty without demur.

5. In view of the above facts and circumstances, and as all these grounds of appeal had been considered and disposed off by the first appellate authority, we do not find any reason to give further consideration to these very grounds.

6. For the above reason, we find no merit in the appeal, which is dismissed.

(Operative part pronounced in Court)

(Ajay Sharma)	**(C J Mathew)**
Member (Judicial)	**Member (Technical)**

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