IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos. ST/71145-71152/2016-CU[DB], ST/70002-70006, 70012, 70017, 70046-70049, 70099-70102, 70323/2017-CU[DB]

(Arising out of Order-in-Appeal No. 50-106-ST/APPL-AGRA/KNP/2016 dated 05/09/2016 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Kanpur)

M/s Krishi Utpadan Mandi Samiti **Appellants**

Vs.

Commissioner of Central Excise, Kanpur **Respondents**

Appearance:

Shri Dharmendra Srivastava (Chartered Accountant)
(In Appeal Nos. ST/71145-71152, 70099-70102, 70323/2017)
None Appeared
(InAppealNos.ST/70002-70006,70012,70017,70046-70049/2017) for Appellants

Shri Pradeep Kumar Dubey (Supdt.) AR for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 22/01/2018
Date of Decision : 22/01/2018

FINAL ORDER NOs. - **70410-70433/2019**

Per: Anil Choudhary

The present appeals are directed against the Order-in-Appeal No. 50-106-ST/APPL-AGRA/KNP/2016 dated 05/09/2016 passed by the Learned Commissioner (Appeals) Customs, Central Excise & Service Tax, Kanpur.

Against Order in Appeal No. 50-106-ST/APPL-AGRA/KNP/2016 dated 05.09.2016

S.No.	Mandi Name	Order in Original No.	Appeal No.	Demand	Penalty imposed	Late Fees	COD Apllication filed
1	M/s KrishiUtpadanMandiSamitiMadhogarh, Jalaun.	06/ST/AC/2015 dated 24.03.2015	229/ST/APPL/ALLD/2015 dated 03.06.2015	1,44,768/- plus interest	U/s 77-10,000/- U/s 78- 1,44,768/-	NIL	NO
2	M/s KrishiUtpadanMandiSamitiBaruasagar, Jhansi.	02/ST/AC/2015 dated 27.02.2015	141/ST/APPL/ALLD/2015 dated 24.04.2015	2,81,307/- plus interest	U/s 77-10,000/- U/s 78- 2,81,307/-	NIL	NO
3	M/s KrishiUtpadanMandiSamitiChibramau, Kannauj	01/Supdt/ADJ/ST/2016 dated 01.03.2016	190/ST/APPL/KNP/2016 dated 27.06.2016	62,702/- plus interest	U/s 77-5,000/- U/s 78- 62,702/-	NIL	NO
4	M/s KrishiUtpadanMandiSamitiBaruasagar, Jhansi.	34/ST/AC/2015 dated 24.09.2015	447/ST/APPL/ALLD/2015 dated 07.12.2015	3,68,913/- plus interest	U/s 77-10,000/- U/s 78- 1,37,685/-	NIL	NO
5	M/s KrishiUtpadanMandiSamitiChibramau, Kannauj	01/Supdt/ADJ/ST/2016 dated 06.07.2015	191/ST/APPL/KNP/2016 dated 27.06.2016	67,021/- plus interest	U/s 77-5,000/- U/s 78- 67,021/-	NIL	Filed for 353 days
6	M/s KrishiUtpadanMandiSamitiChirgaon, Jhansi	03/ST/AC/2015 dated 19.03.2015	368-ST/APPL/ALLD/2015 dated 27.02.2015	2,01,619/- plus interest	U/s 77-5,000/- U/s 78- 2,01,619/-	NIL	Filed for 8 days.
7	M/s KrishiUtpadanMandiSamitiBewarkonch, Jalaun	20/ST/ADC/2015 dated 29.10.2015	480-ST/APPL/ALLD/2016 dated 11.01.2016	Rs. 9,66,351 plus interest	U/s 77(1)(a)- Rs. 10,000/- U/s 77(2)-Rs 10,000/- U/s 78- 9,66,351/- u/s 76- No quantification given.	No quantification given	NO
8	M/s KrishiUtpadanMandiSamitikonch, Jalaun	05/ST/JC/2014 dated 15.12.2014	58-ST/APPL/ALLD/2015 dated 27.02.2015	Rs. 10,86,799plus interest	U/s 77(1)(a)- No quantification given. U/s 77(1)(b)- Rs. 10,000/- U/s 77(2)-Rs 10,000/- U/s 78- 10,86,799/- u/s 76- No quantification given	No quantification given	NO
9	M/s KrishiUtpadanMandiSamitiAit, Jalaun	27/ST/AC/2015 dated 22.09.2015	443-ST/APPL/ALLD/2015 dated 07.12.2015	Rs. 1,55,747/- plus interest	U/s 77-10,000/- U/s 78- 1,55,747/-	NIL	Filed for 115 days
10	M/s KrishiUtpadanMandiSamitiJalaun	03/ST/JC/2014 dated 31.10.2014	477-ST/APPL/ALLD/2014 dated 11.12.2014	Rs. 8,70,029 plus interest	U/s 77(1)(b)- Rs. 10,000/- U/s 77(2)-Rs 10,000/- U/s 78- 8,70,029/- u/s 76- No quantification given	No quantification given	NO

11	M/s KrishiUtpadanMandiSamitiGhiror Manipur	02/DC/ADJ/ST/2016 dated 21.01.2016	86-ST/APPL/KNP/2016 dated 14.03.2016	Rs. 1,46,956 plus interest	U/s 77-10,000/- U/s 78- 1,46,956 /-	NIL	NO
12	M/s KrishiUtpadanMandiSamiti Mohammadabad	11/SUPDT/ADJ/ST/2014 dated 27.11.2014	170-ST/APPL/LKO/2015 dated 21.12.2015	Rs. 31,762 plus interest	U/s 77-2,000/- U/s 78- 31,762 /-	NIL	NO
13	M/s KrishiUtpadanMandiSamitiBharuasumerpur, Hamirpur	123/ST/KUMS/AC/2015 dated 30.10.2015	485-ST/APPL/ALLD/2016 DATED 13.01.2016	Rs. 4,49,848 plus interest	U/s 77(1)(a)-3,58,200 U/s 77(2)-10,000/- U/s 78- 4,49,848/-	NIL	NO
14	M/s KrishiUtpadanMandiSamitiBharuasumerpur, Hamirpur	125/ST/KUMS/AC/2015 dated 30.10.2015	482-ST/APPL/ALLD/2016 DATED 13.01.2016	Rs. 2,48,652 plus interest	U/s 77(1)(a)- Rs 10000 U/s 77(2)-10,000/- U/s 78- 2,48,652/-	NIL	NO
15	M/s KrishiUtpadanMandiSamiti, Jalaun	29/ST/AC/2015 dated 22.09.2015	444-ST/APPL/ALLD/2015 DATED 07.12.2015	Rs. 3,14,771/- plus interest	U/s 77-10,000/- U/s 78- 3,14,771 /-	NIL	NO
16	M/s KrishiUtpadanMandiSamitiKhair, Aligarh	87/ADJ/ST/2015 dated 10.11.2015	06/ST/APPL/KNP/2016 dated 29.01.2016	Rs. 2,01,797/- plus interest	U/s 77(2)-10,000/- U/s 78- 2,01,797 /-	NIL	NO
17	M/s KrishiUtpadanMandiSamiti, Mainpuri	04/DC/ADJ/ST/2016 dated 29.02.2016	142/ST/APPL/KNP/2016 dated 10.05.2016	Rs. 3,53,229/- plus interest	U/s 77-10,000/- U/s 78- 3,53,229/-	NIL	NO
18	M/s KrishiUtpadanMandiSamiti, Mainpuri	03/ST/ADC/2016 dated 29.01.2016	143/ST/APPL/KNP/2016 dated 10.05.2016	Rs. 9,60,187/- plus interest	U/s 77(2)-10,000/- U/s 77(1)(a)-10,000/- U/s 78- 9,60,187/-	NIL	NO
19	M/s KrishiUtpadanMandiSamiti, Gursarai, Jhansi	25/ST/ADC/2015 dated 24.11.2015	53/ST/APPL/KNP/2016 dated 02.03.2016	Rs. 7,01,534/- plus interest	U/s 77(2)-10,000/- U/s 77(1)(a)-10,000/- U/s 78- 7,01,534/-	NIL	NO
20	M/s KrishiUtpadanMandiSamiti, KalpiJalaun	37/ST/AC/2015 dated 05.11.2015	55/ST/APPL/KNP/2016 dated 02.03.2016	Rs. 62,260/- plus interest	U/s 77-10,000/- U/s 78- 62,260 /-	NIL	NO
21	M/s KrishiUtpadanMandiSamiti, Kurara, Hamirpur	111/ST/KUMS/AC/2015Dated 21.10.2015	483-ST/APPL/ALLD/2016 DATED 13.01.2016	Rs. 1,17,216 plus interest	U/s 77(1)(a)-3,58,200 U/s 77(2)-10,000/- u/s 76 - 513 U/s 78- 1,17,216 /-	NIL	NO

22	M/s KrishiUtpadanMandiSamitiKurara, Hamirpur	112/ST/KUMS/AC/2015 dated 23.10.2015	484-ST/APPL/ALLD/2016 DATED 13.01.2016	Rs. 1,19,510 plus interest	U/s 77(1)(a)- 10,000 U/s 77(2)- 10,000/- u/s 76 - 513 U/s 78- 1,19,510 /-	NIL	NO
23	M/s KrishiUtpadanMandiSamitiMouranipur, Lalitpur	08/ST/AC/2015 dated 24.03.2015	367-ST/APPL/ALLD/2015 dated 10.09.2015	Rs. 3,61,803 Plus interest	U/s 77- Rs. 10,000 U/s 78 Rs. 3,61,803/-	NIL	NO

2. The learned counsel for the appellants urge that the appellants are a statutory body under the U.P. Krishi Utpadan Mandi Adhiniyam, 1964. Under the circumstances, due to the office procedure in the appellant's office, delay took place in appointing the consultant to draft and file the appeals and also in the decision for filing the appeals. The appellants will suffer irreparable loss and injury if the delay is not condoned in the interest of Justice.

3. Learned A.R. for Revenue opposes the prayer for condonation.

4. Having considered the rival contentions, we find that it is just and proper to condone the delay in filing the appeals in the interest of Justice.

4.1. As all appeals are being filed against Common Order in Appeal No. 50-106-ST/APPL-AGRA/KNP/2016 dated 05/09/2016, we take up all appeals listed for final hearing.

5. The learned counsel for the appellants, Mr. Dharmendra Srivastava states that it is an admitted fact that the

appellants have not charged Service Tax from the receivers of service being renting of immovable property. Accordingly, it is pleaded that cum-duty benefit for calculation of service tax be allowed. It is also urged that under the facts and circumstances, the appellants being a Statutory body, the compliance under Service Tax was not made only due to lack of knowledge and/or instructions from the Administrative Authority of the appellants. The transaction in dispute are duly recorded in the books of accounts, ordinarily maintained by the appellants. The demand have been raised on the basis of information furnished to the Revenue by the appellants. Accordingly, there being no contumacious conduct and/or deliberate default on the part of the appellants, the penalties are fit urged to be set aside.

6. The learned A.R. for Revenue have supported the impugned order passed by the Learned Commissioner (Appeals).

7. Having considered the rival contentions, we are satisfied that it is a fit case for allowing the cum-duty benefit for calculation of Service Tax and accordingly, we allow this ground. Under the facts and circumstances, we also hold that there is no contumacious conduct or suppression of facts or deliberate default in compliance with the provisions of the Service Tax Act and Rules on the part of the appellant and accordingly, we set aside the penalty under section 76, 77 and 78 of the Act. So far, late fee under Section 70 read with

Rule 7 is concerned, we modify the same holding that penalty under Section 70 read with Rule 7 would be payable for default after 27th May, 2011, when Revenue initiated enquiry. It is facts on record that each Mandi Samiti is constituted separately with separate PAN numbers, henceforth eligible for basic exemption subject to satisfaction of other conditions specified in Notification No. 06/2005-ST dated 1st March, 2005 and as amended from time to time.

8. Accordingly, the appeals are allowed in part, and remanded to the Adjudicating Authority for re-calculation of tax on basis of above findings.

(Dictated & Pronounced in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Anil Choudhary)
Member (Judicial)

Lks