FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 10/01/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70076-70077/2018-CU[DB] dated 04/01/2018

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

Application	Appeal	Name and Address of Appellant
1	ST/1823/2011	**SARITA HARLALKA,** ELFISTONGANJ, JAUNPUR (U.P.)
2	ST/1824/2011	**MR. KRISHNA KUMAR HARLALKA,** ELFISTONGANJ, JAUNPUR (U.P.)
		Name and Address of Respondent
3		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad
4		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad

Other Appellants and Respondents as per Annexure

Copy To

5 Bar Association, CESTAT, Allahabad

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

7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

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

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

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

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

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

13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

15 C.D.R. 16 Office Copy 17 Second Folder Copy 18 Guard File

Asstt. Registrar

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

APPEAL No. ST/1823 & 1824/2011-CU[DB]

(Arising out of Order-in-Appeal No. 83-84/ST/ALLD/2011 dated 04-05/07/2011 passed by Commissioner of Central Excise & Customs (Appeals), Allahabad)

Sarita Harlalka (in Appeal No. ST/1823/2011) **&**

Krishan Kumar Harlalka (in Appeal No. ST/1824/2011) **Appellant(s)**

Vs.

Commissioner of Central Excise, Allahabad **Respondent(s)**

Appearance:

Absent on Call for Appellant(s)
Shri Mohd Altaf (Asstt. Commr.) AR for Respondent(s)

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 04/01/2018
Date of Decision : 04/01/2018

FINAL ORDER NOs: 70976-70977/2018

Per: Archana Wadhwa

Both the appeals are being disposed of by a common order, in the absence of the appellants, after hearing the learned DR and after going through the impugned order.

2. As per the facts on record the appellants are earning commission from one M/s Amit Oils Ltd. for sale of their vegetable oil. During the period from 2004-05 to 2007, the commissions earned by them were held to be falling under the

category of Business Auxiliary Services and were held liable to service tax. Accordingly, demands were raised against them by issuance of show cause notice and by invoking the longer period of limitation. The appellants took a categorical stand before the authorities below that inasmuch as they were working in their individual capacity and were not a commercial concern, no duty liability would arise against them for the period prior to 01.05.2006, when there was a change in the definition and the expression "commercial concern" was replaced with the wordings "Any person". The demand was also assailed on the point of limitation as also on the ground that a part of the same would fall within the small scale exemption.

3. We note that admittedly the demands in both cases are confirmed by invoking the longer period of limitation. For the period prior to 01.05.2006, there could be a bona fide belief on the part of appellants that inasmuch as they are not commercial concerns and are working as individuals, no tax liability can arise. Otherwise also we note that the appellants are working in their individual capacity and earning the commission for the sale of vegetable oil of their principal, cannot be held to be well acquainted with the legal position. There was a lot of confusion in the field, in the earlier stages of introduction of service tax and was undergoing changes. In this scenario, no mala fide can be attributed to the appellants

for the simple reason that they did not get themselves registered with the Department and did not file the returns. It is well settled law that for attributing the mala fide there has to be evidence indicating that such non-payment of tax was with an intention to evade tax. This was so held by the Hon'ble Supreme Court in the case of Padmini Products vs. Collector of Central Excise reported at 1989 (43) E.L.T. 195 (S.C).

4. Inasmuch as the Revenue has not referred to any positive facts indicating any mala fide intention of the appellants to evade duty, we are of the view that the longer period is not available to the Revenue.

5. Accordingly, the demands as also penalties are set aside on the ground of limitation and both the appeals are allowed with consequential relief to the appellants.

(Dictated and pronounced in Court)

Sd/- **Anil.G. Shakkarwar** **Member(Technical)**	**Sd/-** **(Archana Wadhawa)** **Member (Judicial)**

Anki