REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 01/12/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70076/2015 dated 01/10/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	ST/3350/2012	GURUCHARAN MOTORS RADHA RAMAN ROAD MAINPURI, UP

Name and Address of Respondent	CCE KANPUR 117/7, SARVODAYA NAGAR KANPUR(UP)-208005

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): SH RUPESH KUMAR,ADV
F-12, LGF KAILASH COLONY
NEW DELHI-110048.

4 Bar Association, CESTAT, Delhi

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisham Pitamah Marg, New Delhi-3

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

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

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 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., 308, Everest Block, Aditya Enclave, Hyderabad – 38

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

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

S.T.Appeal No.3350/12

Arising out of O/A No.352-ST/LKO/2012 dated 30.07.2012 passed by Commissioner (Appeals) of Customs, Central Excise & S.Tax, Lucknow.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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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? : Yes.
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen.
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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M/s Gurucharan Motors, Manipuri

...APPELLANT(S)

VERSUS

Commissioner of Central Excise & S.Tax, Kanpur

RESPONDENT (S)

APPEARANCE

Shri Rupesh Kumar, Adv. for the Appellant (s)
Shri Dipak Kumar Deb, A.C. (D.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 01. 10. 2015

Final ORDER NO. 70076/2015

Per Mr. Anil Choudhary :

The Appellant, M/s Gurucharan Motors, is in Appeal against Order-in-Appeal No. 352-ST/LKO/2012 dated 30.07.2012 passed by Commissioner (Appeals) of Customs, Central Excise & S.Tax, Lucknow.

2. Brief facts are that the Appellant is an "authorized service station" and registered with the Service Tax Department for discharging service tax w.e.f.31.05.2004. A show-cause notice (SCN) was issued to them alleging therein that the Appellant was not paying service tax nor filed any half yearly returns. A summons was sent to them on 16.03.2010. Shri Arvind Singh, Partner of the Appellant Company, appeared before the Superintendent (Prev.) of Central Excise on 25.03.2010 and the statement was recorded. It was noticed by the Revenue that the Appellant paid the service tax upto 30.09.2007. Thereafter, Bank refused to take deposit of tax in absence of PAN based registration number. Further, he agreed to obtain PAN based registration number and deposited the tax due, within a week. The records show that the Appellant had deposited due taxes on 30.03.2010. It further appeared that the Appellants have not deposited interest on delayed payment. Accordingly, they were required to show-cause vide notice dated 19.5.2011 as to why the amount of Rs.12,634/- be not demanded and appropriated from the pre-deposit already made along with interest amount of Rs.21,551/-, the calculation of which is given in the SCN and penalty was proposed under Section 77,78 & 70 (1) of the Finance Act, 1994. The Appellant

contested the show-cause notice, but the same was adjudicated and proposed demand was confirmed and adjusted by the Asstt. Commissioner further penalty of Rs.12,634/- was imposed under Section 77 and equal amount under Section 78 of the Finance Act, 1994. Further, late fee of Rs.20,000/- was imposed under Rule 7-C of the Service Tax Rules, 1994 read with Section 70 of the Act for not filing half yearly returns for the period April, 2004 to March, 2011. Being aggrieved, the Appellant preferred an Appeal before the ld.Commissioner (Appeals), who has pleased to reject the Appeal upholding the findings of the Order-in-Original by observing that there is default on the part of the Appellant for not taking PAN based registration number and also observed that the payment of tax was not rightly deposited by the Appellant.

3. Being aggrieved, the Appellant is before this Tribunal. Hence, the present Appeal. The ld.Commissioner (Appeals) observed that they have regularly paid the taxes since the date of Registration in 2004-05 and have paid till September, 2007, when the Bank refused to accept the payment of tax when assessee want to deposit Rs.12,634/- for the half yearly period from April, 2007 to September, 2007. Accordingly, the assessee not being properly advised and the Partner of the Appellant being not highly educated, could not understand their legal obligation i.e. to apply for PAN based registration number and thereafter, pay the tax accordingly and file returns along with copy of the challan. It is further urged that there is no malafide or deliberate default on the part of the Appellant, which is evident from the language of the SCN. It is further urged that at the

first instance in the statement recorded on 25.03.2010, the Partner of the Appellant stated the circumstances of default, which do not indicate anything as to contumacious conduct or deliberate default of the provisions of law. It is further pointed out that the amount of interest demanded Rs.21,551/- has been deposited during the appellate stage on 06.08.2013. Accordingly, the ld.Advocate for the Appellant, prays for waiver of penalty imposed.

4. The ld. D.R. for the Revenue, relies on the impugned order and prays for dismissal of Appeal.

5. Having considering the rival contentions, I am satisfied that no case of deliberate default or contumacious conduct, is make out against the Appellant. Further, I take notice of the fact that the Appellant had paid the amount of tax within a week, on being so pointed out by the Revenue much before issuance of SCN, which was issued on 19.05.2011, months after the amount was paid. Accordingly, I set aside the penalty under Sections 77,78 & 70 (1) read with Rule 7 (C) of Service Tax Rules, 1994.

6. Appeal is allowed as indicated above.

(Dictated and pronounced in the open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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प्रमाणित प्रति / Certified True Copy
सहायक पंजीकार / Asstt. Registrar
(C.E.S.T.A.T.)
38, M.G. MARG, ALLAHABAD-211001