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

Dated: 16/5/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/ 70207/2016 SM** dated 06/11/2015

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
	E/55680/2014 SM	KISAN SAHKARI CHINNI MILLS LTD SAMPURNA NAGAR LAKHIMPUR KHERI(UP)

Name and Address of Respondent	CCE, LUCKNOW 7-A, ASHOK MARG LUCKNOW

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH VIKRANT KACKRIA,ADV
509, SECTOR-7
PANCHKULA,HARYANA

4 Bar Association, CESTAT, ALLAHABAD
5 Director Publications, Customs, Excise, I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm 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., 108, Everest Block, Aditya Enclave, Hyderabad -- 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
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Asstt. Registrar
Regional Bench, Allahabad

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

Ex. Appeal No.55680/14

Arising out of OIA No.111-CE/LKO/2014 dated 25.08.2015 passed by the Commissioner (Appeals-I), 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? :
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether His Lordship wishes to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental Authorities? :

M/s Kisan Sahkari Chinni Mills Ltd.

..APPELLANT(S)

VERSUS

Commissioner of Customs, Central Excise & S.Tax, Lucknow

RESPONDENT (S)

APPEARANCE

Shri Manoj Kumar, Advocate for the Appellant (s)
Shri Manoj Kumar, Asstt. Commissiner (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 06. 11. 2015

Final ORDER NO. 70207/2016

Per Mr. Anil Choudhary :

The Appellant, M/s Kisan Sahkari Chinni Mills Ltd., is in Appeal against Order-in-Appeal No.111-CE/LKO/2014 dated 25.08.2015 passed by the Commissioner (Appeals-I), Customs, Central Excise & S.Tax, Lucknow.

2. Brief facts of the case is that the factory of the appellant is a Sugar mill under U. P. State Federation of Cooperative Sugar Mills. A show cause notice dated 7/11/2011 was issued alleging therein that although the appellant have filed the ER - 1 returns regularly, they failed to file the return in form ER - 4 and ER - 7 as required under rule 12A of the Central Excise rules and also failed to file returns in form ER - 5 and form ER - 6 as required under the provisions of rule 9(A) (i) and (3) of the Cenvat credit rules, for the period 2006-07 to 2010-11, and accordingly penalty was proposed under rule 27 of the Central Excise rules 2002 for each period of default.

3 The appellant contested the show cause notice on the ground that they are located at remote place. Further, they have regularly filed ER-I returns and paid the taxes/duty. Further, they were never advised by the Revenue Department to file these returns. That there is no deliberate default for violation of the provisions of law. Further, there was no revenue implication and there occured only a venial breach. The SCN was adjudicated and consolidated penalty was imposed at Rs.3,65, 000/-.

4. Being aggrieved the appellant preferred appeal before the Commissioner (Appeals), who vide the impugned order was pleased to reduce the penalty to Rs. 20,000/-observing that neither the jurisdictional officers nor the audit officers had ever raised any objection. Had the appellant been prompted to file the returns in question, the default would not have taken place. The Commissioner also took notice of the fact that the

show cause notice was issued after lapse of 5 years and that there was contributory negligence on the part of the revenue officer..

5. Being aggrieved the appellant assessee is before this Tribunal that in view of the admitted fact that they are located at a remote place and were never advised by the Revenue Department and filed the returns in question. The Commissioner (Appeals) should have set aside the penalty in view of the ruling of the Apex Court in the case of Hindustan Estates Limited Vs. State of Orissa : 1978 (2) ELT 159 (SC).

6. The ld. DR relies on the impugned order and further states that the appellant have been negligent throughout in complying with the provisions of law. Accordingly, he prays for dismissing the appeal.

7. Having considered the rival contentions, I hold that the breach committed is venial in nature and did not have any revenue implications. Further, I find that the extended period is not attracted in such cases of penalty when there is no case of evasion of duty by reason of fraud et cetera. Accordingly. I reduce the amount of penalty under Rule 27 of the Central Excise Rules, is reduced to Rs. 10,000/-.

8. Thus the appeal is allowed in part.

(Pronounced in the open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

प्रमाणित प्रति / Certified True Copy
9.6.16

सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001