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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. ST/617 /2010 – SM [BR] Date **05/01/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S. U G SUGAR & INDUS. LTD.
SEOHARA, BIJNORE

M/S. U G SUGAR & INDUS. LTD. Appellant

Vs

C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 27 / 2011 –SM[BR] dated 14.12.2010 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. MEERUT II
OPP. SAHEED PARK (NEAR
ASHOK KI LAT) DELHI ROAD,
MEERUT (UP)
2. Adv. / Consult
MR.KAMALJEET SINGH
J-144, PATEL NAGAR -
I,GHAZIABAD.
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram,
NEW DELHI

COURT No. II

SERVICE TAX APPEAL NO. 617 OF 2010

[Arising out of Order-in-Appeal No. 14-ST/MRT-II/2010 dated 27.01.2010 passed by the Commissioner of Customs & Central Excise (Appeals), Meerut-II, Meerut]

Date of Hearing/decision: 14th December, 2010

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member

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 Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s. U.G. Sugar & Industries Ltd., Appellant

Vs.

CCE, Meerut-II Respondent

Appearance:
Present for the Appellant :Shri Kamaljeet Singh, Advocate
Present for the Respondent :Shri S.K. Bhaskar, DR

Coram: Hon'ble Shri D.N. Panda, Judicial Member

Final **ORDER NO. 27/2011 SM (BR) DATED**

Per D.N. Panda:

Learned Counsel submits that "Banking and other Financial Services" as "Merchant Banking Service" alleged to have been availed by the appellant for the period from September, 2006 to August, 2007 imposing service tax liability as recipient of such service was not required to be adjudicated because when above service was made taxable from 19.4.2006 inserting sub-clause (i)(b) to Rule 2(d) of Service Tax Rules, 1994, the appellant did not fail to discharge its tax liability as that was due. On 8.9.2007 the appellant paid the tax due through TR-6 challan which is evident from page 22 of the appeal folder containing show cause notice. Such a fact also find place in para 5.2 of the impugned order. Accordingly imposition of penalty on the appellant would be unreasonable and shall be a genuine hardship in view of introduction of law for the first time.

2. Learned D.R. supports the order of the learned Appellate Authority below on the ground that para 26.1 of the adjudication order appearing at page 35 thereof

exhibit that there was no justifiable reason shown by the appellant against invocation of Section 73 of the Finance Act, 1999.

3. Heard both sides and perused the record.

4. There is no difficulty to understand that incidence of levy under aforesaid category fastened liability on the appellant from 19.4.2006 by Notification No. 10/2006-ST dated 19.4.2006. The liability that has been incurred by the appellant is for the period soon after two months of the implementation of the law. Secondly, it is a case where there is no mala fides of the appellant apparent from the face of adjudication order. Perusal of the first appellate order does not bring out contumacious conduct of the appellant. Rather the appellant appears to have cooperated with Revenue to discharge the tax liability as has been recorded in para 5.2 of the impugned order as soon as incurrence of liability was brought to notice of the appellant.

5. Learned Counsel submitted that interest liability on the service tax demand was also discharged while discharging service tax liability as aforesaid. Para 10(i) at page 23 of the show cause notice confirms such

averment. Inquiry into para 5.3 read with para 5.4 of the appellate order does not disclose evasive attitude of the Appellant nor suppression of fact appears to have been made with intent to evade tax due. There was no loss of Revenue caused by Appellant. But it was a case of postponement of liability. In absence of elements to levy penalty, there exists reasonable cause to waive penalties under section 80 of the Finance Act, 1994.

6. Learned D.R. submitted that when there was default to pay service tax at least the Appellant should suffer penalty under Section 76 of the Finance Act, 1994. Such a submission does not appeal for the reason that Section 76 is subject to the provisions contained in section 80 of the Finance Act, 1994 and penalty cannot be imposed ipso facto. Section 76 and 78 being subject to benediction of section 80 of Finance Act, 1994, in absence of mala fide of the appellant levy of penalty is unwarranted. Reasonable cause as aforesaid warrant invoking of provision of section 80 of the Finance Act, 1994 to waive penalty imposed under section 76 and 78 of the said Act. The other reason that also appeals for waiver is that if the appellant is not

found to be willful evader, neither Section 76 nor Section 78 of Finance Act, 1994 can be invoked.

7. For all the aforesaid reasons the appellant succeeds and its appeal is allowed, setting aside the impugned order confirming tax liability.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK