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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/1121/2011 – SM[BR] ST / STAY/ 2363 /2011-SM[BR] **Date 14/12/2011**

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

To :
KRISHNA MANUFACTURING COMPANY,
BALAIPUL, KANNAUJ.(U.P.)

KRISHNA MANUFACTURING COMPANY, Appellant
Vs
C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No. 868/2011-SM[BR]&S/835/2011** dated 30.11.2011 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. KANPUR
117/7, SARVODAYA NAGAR,
KANPUR 208005.

2. Adv. / Consult
MR.AMIT AWASTHI
H-1, IST FLOOR, RADHEY APPARTMENT PLOT NO. 7/116A, SWAROOP NAGAR,
KANPUR-208002

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066

COURT NO. II

ST/Stay No. 2363/2011 in Service Tax appeal No. 1121 of 2011-SM

[Arising out of Order-in-Appeal No. 126-ST/LKO/2011 dated 8.4.2011 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Lucknow]

Date of Hearing: 30th November, 2011

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. Krishna Manufacturing Co., Appellant

Vs.

CCE, Kanpur Respondent

Present for the Appellant : Shri A.K. Dixit, Advocate
Present for the Respondent : Mrs. R. Jagdev, SDR

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

FINAL ORDER NO. 868/2011 SM(BR)+
S-835/2011 SM(BR)

Per D.N. Panda:

Learned Counsel submits that tax element is not disputed. What is in controversy is penalty only, imposed under various sections of Finance Act, 1994. According to him when the appellant came to know that service tax liability in respect of Goods Transport Service received is arising, the appellant voluntarily worked out its liability and discharged the same. But the authorities proceeded against the appellant holding that there was no compliance to law with intent to evade payment of service tax and on the ground of allegation of suppression of fact the appellant has been penalized. Therefore, not only stay application be disposed but also appeal may be disposed.

2. Learned D.R. on the other hand says that when there was a clear case of suppression against the appellant not only tax but penalty was also impossible. Accordingly, both stay application and appeal be dismissed.

3. Heard both sides and perused the record.

4. Reading of Para 6 of first appellate order throw light as to the reason how allegation of suppression still subsist when the learned appellate authority took lenient view for reduction of penalty.

5. Penalty should not ipso facto be imposed without looking into the gravity of the matter and law relating to penalty. Intention to evade payment of tax being essential ingredient of law there should not be penalty. Contumacious conduct of the appellant does not come out from Para 6 of the appellate order.

6. When the factual position comes out as above, it is not practically possible to uphold penalty imposed by both the

authorities below. Therefore, dispensing with requirement of pre-deposit appeal is allowed.

(Pronounced in the open Court)

(D.N.PANDA)
JUDICIAL MEMBER

RK