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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/901 /2010 – SM [BR]** Date **25/04/2011**

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

To :
M/S THE KANORIA SUGAR & GENERAL MANUFACTURING CO. LTD.
CAPTAINGANJ, DISTT. KUSHINAGAR (U.P.),
PIN: 274301

M/S THE KANORIA SUGAR & GENERAL MANUFACTURING CO. LTD. Appellant

Vs

C.C.E ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 207/ 2011-SM[BR]** dated 30.3.2011 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 ALLAHABAD
38,M.G.MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult
MR.S.D.GAUR
SB-108, SHASTRI NAGAR, GHAZIABAD.

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. 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 -
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 (Harvana)
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

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:30.03.11
Date of decision:30.03.11

Service Tax Appeal No.901 of 2010

[Arising out of Order-in-Appeal No. 3/ST/ALLD/2010 dated 29.01.2010 passed by the Commissioner of Central Excise (Appeals), Allahabad].

M/s. Kanoria Sugar & General Mfg. Co. Ltd. Appellant

Vs.

CCE, Allahabad Respondent

For approval and signature:

Hon'ble Shri Rakesh Kumar, Member (Technical)

1. Whether Press Reporters may be allowed to see 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?

Appearance: Rep. by Shri S.D. Gaur, Consultant for the appellant.
Rep. by Shri R.K. Gupta, SDR for the respondent.

CORAM: **Hon'ble Shri Rakesh Kumar, Member (Technical)**

Final Order No. 207/2011 SM(BR)/Dated:30.03.2011

Per Rakesh Kumar

In this case, the appellants are engaged in the manufacture of V.P.Sugar and Molasses and were liable to pay service tax on the same, for which they had Service Tax Registration. The allegation against the appellant is that they delayed payment of service tax in respect of the GTA Service during the period of May, 2007 to June, 2007. For this failure to pay the service tax during these months by the due dates, the total penalty of Rs.14,289/- has been imposed on them under Section 76 of the Finance Act, 1994. The Asstt. Commissioner's order imposing penalty was upheld by the Commissioner. It is against this order that the present appeal has been filed.

2. Heard both the sides.

3. Shri S.D. Gaur, Consultant, ld. Advocate for the appellant pleaded that the delay in payment of service tax was on account of financial problems, that the entire service tax for the months of April, May and June had been paid on 28.06.07, 28.06.07 and 5.7.2007 respectively, that the service tax had been paid though after delay, and that no penalty under Section 76 is imposable and in this regard, he relies upon the judgement in the case of **K.S. Murali Mohan Vs. Commissioner of Service Tax** reported in **2011 (21) STR 512**. He, therefore, pleaded that the impugned order upholding the penalty on the appellant under Section 76 is not correct.

4. Shri R.K. Gupta, ld. SDR defending the impugned order pleaded that it is not disputed that there was delay in payment of service tax during the months of April to June, 2007, that Section 76 of the Finance Act, 1994 is attracted when in any case where the assessee fails to discharge the service tax liability by the due date, that in this case the only provisions under which the service tax can be waived is Section 80, for which the assessee has to give reason as to why he was prevented from discharging service tax liability by the due date, that in this case, reason given by the appellant for their failure to discharge service tax liability is not acceptable and that in view of this, there is no infirmity in the impugned order.

5. I have carefully considered the submissions from both the sides and perused the records. There is no dispute that there was delay in discharge of service tax liability during April, 2007, May, 2007 and June, 2007 for which the penalty under Section 76 has been imposed. The only proviso under which the penalty can be waived is Section 80 for which the appellant have to give reasons as to why they could not discharge the duty liability by the due dates . Except financial problems, no other reasons has been given by them. This is not a valid reason for wavier from penalty. Therefore, I do not find any merit in this appeal and there is no infirmity in the impugned order passed by the Commissioner (Appeals). Hence, the appeal is dismissed.

(Rakesh Kumar)
Member (Technical)

Ckp.