14

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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

CUSTOMS APPEAL BRANCH

Appeal No. ST/378 /2011 - CU[DB] Date **31/10/2011**
ST/S/763/2011

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

To :
M/S KISAN SAHKARI CHINNI MILLS LTD.,

SATHA, DISTT. ALIGARH (U.P.)

M/S KISAN SAHKARI CHINNI MILLS LTD., Appellant

Vs

C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/577/ 2011 CU[DB]** dated 25.10.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Along with Stay order No. ST/ 751/11

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult
MR.VIKRANT KACKRIA
509, SEC-7,PANCHKULA, HARYANA

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. 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,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
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 378 of 2011
Service Tax Stay Application No.763 of 2011

[Arising out of Order-in-Appeal No. 488-ST/LKO/2010 dated 30.12.2010 passed by the Commissioner of Central Excise, & Service Tax(Appeals), Lucknow]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

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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?	:	No
3. Whether Their Lordships wish 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. Kisan Sahkari Chini Mills Ltd. — Appellants

Vs.

Commissioner of Customs
Lucknow — Respondent

Appearance:
Shri Vikrant Kackria, Advocate for the Appellants
Shri K.K. Jaiswal, SDR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing/decision : 20.10.2011

Final **ORAL ORDER NO.** ST/577/11
Stay order No ST/751/11

Per Archana Wadhwa (for the Bench):

After dispensing with the condition of pre-deposit of Service Tax of Rs.2,05,215/- and penalty of Rs.1,00,000/-, we proceed to decide the appeal itself inasmuch as the issue lies in a narrow compass.

2. The said demand stands confirmed against the appellant by denying the benefit of notification No. 1/06-ST, dated 1.3.06 which grants abatement to the extent of 75% for payment of Service Tax on the GTA services received by the assessee. Revenue's contention is that such abatement is available subject to transporters giving certificate to the effect that no modvat credit stands availed by them and ~~the~~ no benefit of notification No. 12/03-ST stands availed by them. Inasmuch as the appellants could not produce such certificates from the transporters, proceedings were initiated against them by way of issuance of show cause notice resulting in confirmation of demand by the original adjudicating authority and upheld by the Commissioner (Appeals).

3. It is the appellants contention that they had produced the GRs issued by the transporters before the original adjudicating authority to emphasis on the issue that such transporters are not registered with the

Service Tax department and as such question of availing any Cenvat credit or benefit of exemption notification by the said transporters does not arise. In any case, submits the learned Advocate that they had produced such certificates before Commissioner (Appeals), after procuring the same from the transporters. The appellate authority has not taken the said certificates into consideration and by ignoring the same, has upheld the orders of the lower authorities. He also relied upon the Tribunal's decision in the case of New Swadeshi Sugar Mills vs. CCE & Service Tax, Patna reported as [2010 (17) STR 446 (Tri-Kol)] as also on the other precedent decisions of the Tribunal.

4. After hearing the learned SDR, who reiterates the reasoning of the lower authorities, we find that the fact that transporters were not registered with the Service Tax department, should have been sufficient as evidence to show that they are neither availing the Cenvat credit nor the benefit of exemption Notification No. 12/2003. In any case, the appellants have subsequently procured such certificates from the transporters and have produced the same before Commissioner (Appeals) who has ignored the same simply. We find that in view of the subsequent certificates produced by the appellants, the fact of non-availment of Cenvat credit and the benefit of notification stands established. As a consequence, the appellant becomes entitled for the benefit of notification No. 1/06-ST. As such, demand of tax confirmed

and penalty imposed upon them cannot be upheld. The same is accordingly, set aside.

5. Stay petition as also the appeal is allowed in the above terms.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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