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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

Date 11/04/2012

Appeal No. ST/1598/2010 – SM [BR]

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

To :
M/S KISHAN CHAND SAVLANI & SONS,
BAZAAR MALKAN, KATRA AHLUWALIA, AMRITSAR.

Appellant

M/S KISHAN CHAND SAVLANI & SONS,

Vs
Respondent

C.C.E. LUDHIANA

I am directed to transmit herewith a certified copy of **Final order No. 313 / 2012 –SM[BR]** dated 29.3.2012 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. LUDHIANA
CENTRAL EXCISE HOUSE, 'F'
BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

2. Adv. / Consult SHRI POOJAN MALHOTRA ADV.
13-R, HUKAM CHAND COLONY NEAR
D.A.V. COLLEGE JALANDHAR.

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-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,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

Service Tax appeal No. 1598 of 2010-SM

[Arising out of Order-in-Appeal No. 201/CE/Ldh/2010 dated 23.8.2010 passed by the Commissioner (Appeals). Customs & Central Excise, Chandigarh-II, Chandigarh]

Date of Hearing/decision: 29th March, 2012

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. Kishan Chand Savlani & Sons — Appellant

Vs.

CCE, Ludhiana — Respondent

Present for the Appellant : Shri Sudhir Malhotra, Adv.
Present for the Respondent : Shri P.K. Sharma, SDR

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

FINAL ORDER NO. 313/2012-SM (BR)

Per D.N. Panda:

Learned Counsel submits that the period under dispute is 1st period of accrual of liability for which there was delay in compliance to law. When the appellant ascertained the liability it discharged the same. Under the conception that it is a small tax payer and eligible to exemption granted under Notification No. 6/2005 it could not discharge the liability. But soon after ascertaining its liability it discharged the same causing no prejudice to Revenue and evidence of which is available as per Para 3 (viii & ix) of the first appellate order. The appellant also made the authority aware that it is governed by Section 73(3) of the Finance Act, 1994, being a case of discharge of liability voluntarily before issuance of show cause notice. In spite of these efforts made, the appellate authority did not consider the case of the appellant under Section 80 of the Finance Act, 1994.

2.On the other hand, it is the grievance of Revenue that when the appellant suppressed the facts it was found to be necessary to issue show cause notice.

3. To resolve the controversy, show cause notice is perused which is available at page 9 & 11 of appeal folder. Page 9 is the original notice while page 11 is addendum. Original notice was issued on 4.3.2006 and addendum was issued on 12.6.2006. It is not at all clear from the show cause notice, how there was suppression of the fact in respect of period 1.4.2005 to 30.9.2005. The appellant says that its liability arose in second half of 2005 since it was under belief that it was entitled to the exemption as a small tax payer for the first half period. Bona-fide of the appellant was certainly appreciated by the learned Commissioner (Appeals) when the

case could not come out as a case under proviso to Section 73(1) of Finance Act, 1994. The appellant's bona fide could not be repelled by cogent reason or evidence on record. The appellant having been pleading benefit under Section 80, the reasonable cause of bonafide and also the first period of liability in its tax history ~~on~~ are reasonable ground to extend benefit under Section 80 of the Finance Act, 1994. Therefore, appeal is allowed confirming tax demand and waiving the penalty imposed.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK