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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/975 /2011 – SM [BR] ST / STAY / 2014 / 2011-SM[BR] **Date 16/04/2012**

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

To :
SHRI MALAK RAM
VILLAGE- MURAR, P.O HAMIRA, DISTT-
KAPURTHALA,PB

SHRI MALAK RAM Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No. 385/2012-SM[BR]&S/320/2012** dated 12.4.2012 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. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

2. Adv. / Consult
MR.GAGAN KOHLI
394,SECTOR-30 A, CHANDIGARH.

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)

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

Service Tax Stay Application No.ST/S/2014/2011-SM in
Service Tax Appeal No.ST/975/2011-SM

[Arising out of Order-in-Appeal No.65/CE/LDH/2011 dated 11.03.2011 passed by the Commissioner, Central Excise (Appeals), Chandigarh].

Shri Malak Ram ...Appellant

Vs.

Commissioner of Central Excise, Chandigarh-II ... Respondent

Present for the Appellant : Shri.Gagan Kohli, Advoate
Present for the Respondent:Shri.P.K. Sharma, SDR

Coram: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Date of Hearing/Decision:12.04.2012

Final **ORDER NO.** 385/2012 SM (BR) **DATED:**________

PER: D.N.PANDA S-320/2012 SM (BR)

Ld. Counsel submits that as soon as the appellant came to know its tax liability, it has discharged entire tax liability of Rs.2,83,150/- alongwith interest. So also to reduce litigation, the appellant has also deposited 25% of the tax demand towards penalty. The appellant being an illiterate and coming from very remote place was unaware of law for which default occurred. There was no intention to default nor there is knowable breach of law. Accordingly, penalty imposed under section 76 and 78 may be waived.

2. Ld. Representative for revenue on the other hand disagrees with the contention of the assessee on the ground that appellant was defaulter knowingly.

3. Heard both sides and perused record.

4. Although the appeal was listed for stay hearing, the cooperative attitude of the appellant and also prayer to reduce the litigation, calls for disposal of the appeal itself. Consequently, both stay application and appeal are taken up for disposal by this common order.

5. The appellant is not in dispute at all against the service tax demand ultimately resulted by first appellate order. That is confirmed. Once that is confirmed, interest flowing from demand also gets confirmed. In so far as the penalty aspect is concerned appellant's cooperative attitude to deposit 25% of the service tax demand calls for a lenient consideration along with the mitigating factor of appellant's location of business in the remote area and illiteracy. Therefore, penalty imposed under section 76 is waived and the penalty under section 78 is reduced to 25% of the service tax demand. The adjudicating

authority has required verifying the challan in respect of contention of deposit made as submitted aforesaid.

6. The penalty imposed under section 77 sustains.

7. In view of the above the first appellate order is modified to the extent indicated above and the appellant gets partial relief. Both application and appal are disposed.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita