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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/1209/2011 - CU[DB]
ST/S/2561/11

Date **13/01/2012**

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

To :
M/S R.B. KNIT EXPORTS,

451, INDUSTRIAL AREA A, LUDHIANA.

M/S R.B. KNIT EXPORTS, Appellant

Vs

C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/33 2012 CU[DB]** dated 23.12.11 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**
Alongwith stay order no ST/S/ 74/12

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F'
BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

2. Adv. / Consult
MR.DSK LEGAL, ATTORNEY & SOLICITORS
21 UGF,ANTARIKSH BHAWAN,KASTURBA GANDHI MARG, N DELHI.

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
(Customs Appeal Branch)

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

Service Tax Appeal No. 1209 of 2011
Service Tax Stay Application No. 2561 of 2011

[Arising out of Order-in-Revision No. 14/Ldh/2011 dated 6.5.2011 passed by the Commissioner of Central Excise, Ludhiana]

For approval and signature:
Hon'ble Mr. D.N.Panda, 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? :

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. R.B. Knit Exports — Appellants

Vs.

Commissioner of Central Excise
Ludhiana — Respondent

Appearance:
Shri Rupinder Singh, Advocate for the Appellants
Shri K.K. Jaiswal, DR for the Respondent

CORAM:
Hon'ble Mr. D.N.Panda, Member (Judicial)
Hon'ble Mr.Rakesh Kumar, Member (Technical)

Date of Hearing/decision : 23.12.2011

Final **ORDER NO.** ST/A/33/12-Cus
Stay order No. ST/S/74/12-Cus

Per D.N.Panda (for the Bench):

Learned Counsel fairly states that the appellant is not in dispute on the tax and interest liability. But it is aggrieved by the penalty imposed by the revisional order under Section 76 and 78 which is harsh. The penalty imposed under Section 77 has been discharged. There was confusion in the country about arise of liability in respect Service provided by foreign parties. Such a confusion was removed in the year 2009 by judgement of Hon'ble High Court of Bombay in the case of Indian National Ship Owners Association vs. Union of India as reported in [2009 (13) STR 235 (Bom)] which has been upheld by the Apex Court. In view of such a scenario, penalising the appellant is not reasonable. Therefore, the same may be set aside after waiving the requirement of pre-deposit.

2. Learned DR on the other hand, supports the orders of the authorities below.

3. We have perused the show cause notice which clearly brings out the liability aspect in respect of the payment made to foreign parties. No doubt for sometime, issue relating to realisation of tax from the recipient of services was in debate. But thereafter the amending provisions of law was introduced and recipients have incurred Service Tax liability. The appellant says that it is registered soon after the amendment of law. There is no intention of evasion Patent from orders but there was delay in payment of Service Tax. It appears that Under bonafide mistake and due to confusion of law there was delay. We are unable to find the manner how suppression has occurred. For no finding in that regard in the revisional order, the

revisional order appears to have preconceived imposition of penalty without assigning the reason for justification of levy which can be gathered reading para 11 of the impugned order. We note that the ratio of Apex Court judgement In Continental Foundation Jt. Venture as reported in [2007 (216) ELT 177 (SC)] is applicable to appreciate that there was no suppression of fact made. In view of discharge of the Service Tax liability with penalty under Section 77 of the Finance Act, 1994, we waive levy of penalty under Section 76 and 78 of the Finance Act.

3. In view of the decision above, the stay petition stands disposed of and appeal is allowed to the extent mentioned above.

4. With the aforesaid decision, we do not say that we have laid down a general principle, ~~principal~~ but for the peculiar circumstances of the case, the relief aforesaid has been granted.

(Pronounced in the Court)

(D.N.Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

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