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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/6 /2011 - CU[DB] Date **23/01/2012**

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

To :
M/S SHOBHA LAL SOLANKI,
SHOP NO. 34, NEW MARKET,
ZAWAR MINES, UDAIPUR.

**M/S SHOBHA LAL SOLANKI,** Appellant

Vs

**C.C.E. JAIPUR II** Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/67/ 2012 CU[DB]** dated 18.01.2012 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

**Copy to :**

1. Respondent
**C.C.E. JAIPUR II**
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME,
JAIPUR 302 005.

2. Adv. / Consult
**MR.BIPIN GARG**
B-1/1289,A-VASANT KUNJ,
NEW DELHI 110 070.

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 & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**
**Principal Bench, New Delhi**

**COURT NO. II**

**DATE OF HEARING : 17/01/12.**

**Service Tax Appeal No. 6 of 2011**

M/s Shobha Lal Solanki Appellant

Versus

CCE, Jaipur – II Respondent

**Appearance**

Ms. Sukriti Das, Advocate – for the appellant.

Shri Amrish Jain, Authorized Representative (SDR) – for the Respondent.

CORAM: **Hon'ble Shri D.N. Panda, Judicial Member**
**Hon'ble Shri Rakesh Kumar, Technical Member**

Final Order No. ST/A/67/12-cu Dated : 17.1.12

## ORDER

**Per. D.N. Panda** :-

Learned Counsel says that the appellant was brought to service tax liability for the services provided as has been tabulated in para 3 of the appellate order under various categories like erection commissioning installation, repair and maintenance and commercial and industrial construction. The appellant being an illiterate was not aware of the law till the Department came for seeking information from the appellant.

2. In respect various categories of taxable service law became applicable from different dates. When the appellant was made aware that his liability arose under law, it sought registration w.e.f. 23/3/09 and has also discharged entire tax liability with interest. That has been appropriated to the Government treasury. Appellant is not disputing any liability relating to levy of service tax and interest. But for the reasons beyond its control, it was not being capable of making compliance to law duly, it has faced penal consequences. Such consequence may be considered from the angle of no motive of appellant to evade service tax.

3. Learned Representative for Revenue on the other hand says that appropriate relief was granted by Appellate Authority reducing penalty for which that order does not call for interference.

4. We have heard both sides and perused the record.

5. While penalty became a proposal in the show cause notice the authorities should have examined each of four contracts as to the manner how liability arose whether was due and if so from which date and whether non-compliance was due to oblique motive of the appellant to cause evasion. Since, the appellant

carried out different types of works and law became applicable on different dates, an adverse view in respect of penalty is not appreciable. Learned Commissioner (Appeals) has definitely considered that the appellant is entitled to certain relief for which the penalty imposed under Section 78 was reduced to Rs. 1,06,926/- as against the levy of Rs. 2,73,164/- upon consideration of the law applicable. Such a consideration clearly speaks that had the appellant been aware of the law, it would have worked out its liability precisely to the extent of relief granted by the learned Appellate Authority and paid. Merely because Revenue detected a case, that does not *ipso facto* invite penal consequence unless the ingredients of penalty in respect of each incidence of levy is brought to record. The penalty portion dealt in page 9 of the appeal record shows that the appellant was defaulter in filing of appeal. This invited penalty under Section 77 for no registration taken duly. Such penalty is confirmed.

6. Learned Counsel claims that Section 80 of the Finance Act, 1994 may be applied to the facts and circumstances of the present appeal, since the appellant deserved to be dealt under that provision of law. So far as penalty under Section 76 and 78 of Finance Act, 1994 are concerned, we are unable to find oblique motive of the appellant to cause evasion. In absence of questionable conduct, penalty does not get approval. All these mitigating factors call for waiver of penalty to the extent that was

confirmed by first appellate order. Consequently, the appeal succeeds partly.

(Dictated and pronounced in open court)

**(D.N. Panda)**
**Judicial Member**

**(Rakesh Kumar)**
**Technical Member**

PK