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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

STAY Application No. : ST/Stay/3114/2012
Appeal No. : ST/2393/2012-CU[DB]

Dated: **11/09/2012**

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

Suri Automobiles
Station Road, Civil Line, Jhansi

Suri Automobiles (Appellant)

VS

C.C.E. & S.T.-Kanpur (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/576/2012-CU[DB[**, Stay/MISC Order No. **ST/SO/938/2012** and dated **04/09/2012** passed by the Tribunal under section 91(5) of **the Finance Act, 1994 relating to Service Tax Act, 1994.**

Assistant Registrar
CUSTOMS Appeal Branch

Copy To,

1. Respondent
C.C.E. & S.T.-Kanpur
117/7...SARVODYA NAGAR,
KANPUR,208005

2. Advocate(s) / Consultant(s):
DHARMENDRA SRIVASTAVA &
ASSOCIATES,CA
13/392(I) CIVIL LINES, KANPUR

3. C.D.R

4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

13. Office Copy

14. Gaurd File

Assistant Registrar
CUSTOMS Appeal Branch

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

Service Tax Stay Appn. No.ST/S/3114/2012 in
Service Tax Appeal No.ST/2393/2012

[Arising out of Order in-Appeal No.164-ST/APPL/KNP/2012 dated 09-05-2012 passed by the Commissioner (Appeals), Kanpur].

M/s. Suri Automobiles ...Appellant

Vs.

CCE, Kanpur ... Respondent

Present for the Appellant : Shri Dharmendra Srivastava, CA
Present for the Respondent : Shri Amresh Jain, DR

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

Stay order No. ST/S/938/12-CU. **Date of Hearing: 04.09.2012**
Final **ORDER NO.** ST/A/576/12-Cu **DATED:** ____________

PER: D.N.PANDA

Ld. CA submits on behalf of the appellant that the demand being very small and tax and interest having been paid, the appeal itself may be disposed.

2. Revenue agrees to the proposal.

3. It is submission of the ld. CA that the appellant is not going to dispute on the tax liability and interest. But the only

prayer is if penalty is ordered that shall ~~make~~ cause hardship to the small assessee. According to him the aspect of liability was under confusion as to whether service tax shall be payable upon providing service or liability arises on receipt of the amount. Such confusion could not enable the appellant to discharge the liability duly. The appellant had no intention to cause prejudice to interest of Revenue making any evasion.

4. Submission of ld. CA appears to be fair and reasonable to invoke section 80 of the Finance Act 1994. Accordingly there shall be no penalty under section 76 and 78 of Finance Act 1994. But there shall be liability of penalty under section 77 of the said Act. Tax liability not being denied nor any ground pressed thereon, appeal is dismissed on that count.

5. In view of our above decision, the stay application is disposed and appeal is disposed confirming tax and interest but granting waiver of penalty to the extent indicated above.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

Anita