FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001

Dated: 26/05/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70223/2016-EX[DB] dated 19/05/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1 E/COD/70048/2015	E/70083/2015	Commissioner of CUSTOMS-Meerut-i EXCISE CHOWK,,UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT,UTTAR PRADESH 250005
		Name and Address of Respondent
2		KANOHAR ELECTRICALS LTD. GANGOL ROAD,,MERRUT ,U.P.

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Copy To

3Advocate(s) / Consultant(s). SH PRAVEEN SHARMA,ADV TAXLAW TRAINING INSTITUTE KF-84,KAVI NAGAR\ GHAZIABAD(UP)201002

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi

6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisham Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaitthyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38
14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

IN THE CUST OMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
E/COD/70048/2015 and
APPEAL No.E/70083/2015(DB)

(Arising out of Order-in-Appeal No. 78-CE/MRT-I/2011 dated 30.11.2011passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
and
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Commissioner of Central Excise, Meerut **Appellant**

Vs.

Kanohar Electricals Ltd. **Respondent**

Appearance:

Shri Pawan Kumar Singh (Supdt), AR for Appellant
Shri Pravin Sharma (Advocate), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 16/05/2016
Date of Decision : 16/05/2016

Final ORDER NO. 70323/2016

Per: Anil G. Shakkarwar

Heard both sides on application for condonation of delay.

2. The application for condonation of delay was filed, praying for condonation of delay of total 1318 days in filling appeal against Order-In-Appeal No.78-CE/MRT-I/2011 dated 30.11.2011. Commissioner of Central Excise, Meerut, received the copy of said Order-in-Appeal on 22/12/2011, through which, commissioner (Appeals) allowed the appeal of the respondent filed before him, allowing refund of Rs. 11,98,563/-. The said Ld. Commissioner filed a revision application against the said Order-in-Appeal before Government of India under Section 35 EE of Central Excise Act, 1944 which was decided by an Order No. 21/2015-CX dated 02/07/2015 wherein the revision application was dismissed for being non maintainable, since the issue was beyond its jurisdiction. Thereafter, Committee of Commissioners vide their authorization dated 23/10/2015, directed to file appeal before this Tribunal along with COD application. The appeal before this Tribunal along with COD application was filed on 30th October, 2015.

3. For filling the said application, the said Ld. Commissioner relied on Order of this Tribunal in the case of Cairn Energy India Pty. Ltd. Vs. Commissioner of Central Excise & Customs, Visakhapatnam-II reported at 2008(221)E.L.T. 440(Tri-Bang.) and he has also relied upon a judgment passed by Hon'ble High Court of

Andhra Pradesh reported at 2015 (316)E.L.T. 612 (A.P.), in the same case affirming the said decision of this Tribunal.

4. Learned A.R. during argument has produced a copy of ruling passed by the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Delhi-III Vs. KAP Cones reported at 2015 (322) E.L.T. 142 (SC) and argued that the Hon'ble Supreme Court has held that the Tribunal has power to condone the delay in filing the appeal including the one, where delay was in passing the review order by a Committee of Chief Commissioners. Further, the delay was due to filling the appeal in wrong Forum and as held in the said case of Cairn Energy India Pty. Ltd., the delay for the period for which the appeal was before a wrong Forum is excludible from the period of delay under Section 14 of Limitation Act, 1963. Normal period allowable by Law for filling the appeal in the present case was 90 days after excluding the period for which the appeal was before wrong Forum. The total time taken for filling appeal was 180 days. They prayed that delay of 90 days may be condoned.

5. Learned Advocate for the respondent argued that Hon'ble Supreme Court's ruling in the referred case, is in relation to provision of Section 35E of Central Excise Act, 1944, where as the present case is covered by Section 35B of the said Act. Sub Section (3) of said Section 35B provides that appeal against order passed by Commissioner (Appeals) is to be filed within 3 months on the date on which such order is communicated to Commissioner of Central Excise. He further produced a copy of order passed by Principal

Bench of this Tribunal in the case of Riba Textile Ltd. Vs. Commissioner of Central Excise, Rohtak reported at 2014 (312) E.L.T. 690 (Tri-Del.) and argued that in the said order the application nowhere disclosed any justification for delay beyond the normal period till the date of filling the appeal and in the absence of any such explanation it may not be possible to hold that there was sufficient cause for such delay in filling appeal and therefore, the said delay could not be condoned.

6. We have carefully gone through the rival submission. The Hon'ble Supreme Court has ruled that the Tribunal has authority to condone the delay in filing the appeal. The Principle Bench of this Tribunal has held that for condonation of delay there should be sufficient cause. We find that the Ld. Commissioner of Central Excise, Meerut in his application for condonation of delay has not given any explanation to establish that there was sufficient cause for delay in filling this appeal beyond the normal period allowed by Law for filing the appeal. We, therefore, hold that the said Ld. Commissioner could not make out a case for the condonation of delay. We, therefore, dismissed the application for condonation of delay. Consequently, the appeal is also dismissed.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

प्रमाणित प्रति / Certified True Copy
9.6.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M.G. MARG, ALLAHABAD-211001