REGISTERED / AD

FAX : 0532-2400149

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

Dated: 12/09/2017

To
Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70954/2017-SM[BR] dated 06/09/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the **Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/70135/2016	**Suresh & Co** Gg43,hindalco Colony,renukoot SONEBHADRA UP
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

Copy To
3 Advocate(s) / Consultant(s):

ANIL KUMAR DWIVEDI
CH. NO. LISTING
REPORTING CAMPUS,HIGH
COURT ,ALLAHABAD

4 Bar Association, CESTAT, Allahabad

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad – 211 001

COURT NO. II

DATE OF HEARING : 06/09/2017.
DATE OF DECISION : 06/09/2017.

Service Tax Appeal No. 70135 of 2016 (SM)

[Arising out of the Order-in-Appeal No. 197/ST/ALLD/2015 dated 28/10/2015 passed by The Commissioner (Appeals), Central Excise, Allahabad.]

M/s Suresh & Co. Appellant

Versus

CCE & ST, Allahabad Respondent

Appearance

None – for the Appellant.

Shri Mohd. Altaf, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**

Final Order No. 70954/2017 Dated : 06/09/2017

Per. Ashok Jindal :-

The appellants has filed this appeal against the impugned order wherein learned Commissioner (Appeals) has dismissed the appeal as time barred.

2. The brief facts of the case are that the adjudication order dated 31st January, 2013 was received by the appellant on 12th February, 2013 whereas the appeal was filed before the learned

Commissioner (Appeals) on 10th June, 2013. The learned Commissioner (Appeals) dismissed the appeal as time bar as same is filed beyond the time limit prescribed under Section 85 (3) of the Finance Act, 1994, wherein it has been prescribed that appeal is to be filed before learned Commissioner (Appeals) within 60 days and the learned Commissioner (Appeals) can condone the delay of 30 days, if same has been explained satisfactory. Therefore, it was held that the appeal is filed beyond the prescribed time limit and the same is dismissed. Aggrieved by this order, the present appeal is before me.

3. None appeared on behalf of the appellant nor any request for adjournment has been received. Appeal has been taken up as issue involved is a narrow-campus.

4. The facts of the case have not been disputed by the appellant that the adjudication order was received by the appellant on 12th February, 2013 whereas the appeal was filed before the learned Commissioner (Appeals) on 10th June, 2013. The sole ground taken by the appellant in their appeal that as per the preamble of the adjudication order, the appeal was required to be filed within three months of the receipt of the adjudication order. It is the contention of the appellant in the appeal memo that as Adjudicating Authority has granted three months to file the appeal before the learned Commissioner (Appeals) therefore, it can filed within another three months, for which the learned Commissioner (Appeals) is having power to condone the delay and it has been explained that delay was caused due to ill health

of the mother of the appellant and to the extent medical certificate is also enclosed.

5. After taking into account of the defence taken by the appellant, I find that as per Section 85 (3) of the Finance Act, 1994 w.e.f. 28th May, 2012, against the adjudication order, the appeal can be filed before the learned Commissioner (Appeals) within two months and time limit can be extended by another one month, if reasons causing delay has been explained satisfactorily. In the preamble also, the Adjudicating Authority had mentioned that the appeal was required to be filed within three months of the receipt of the adjudication order.

6. In that circumstances, as it is an admit fact that appeal was filed before the learned Commissioner (Appeals) beyond the prescribed time limit as per Section 85 (3) of the Act, I hold that appeal filed by the appellant is barred by limitation. Therefore, I do not find any infirmity with the impugned order. The same is upheld. The appeal filed by the appellant is dismissed.

(Dictated and pronounced in open court.)

Sd/-

(Ashok Jindal)

PK

Member(Judicial)

प्रमाणित प्रति/Certified true copy

21/09/17

सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
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38, M. G. MARG, ALLAHABAD-211001