FAX : 011-26108426

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: **09/07/2014**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/52726/2014-CU[DB]** dated **27/06/2014**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **129-A(4) of the Customs Act, 1962.**

Asstt. Registrar(CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	C/COD/58103/2013	C/524/2011	**FLOWER AND TISSUE INDIA LTD.** 101, AKASH GANGA APARTMENTS, 22, GODOWN, JAIPUR.
			Name and Address of Respondent
2			**C.C.(JODHPUR)** HQ at New Central Revenue Building, Statue Circle, C Scheme, Jaipur 302005.

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Copy To

3Advocate(s) / Consultant(s):

JATIN MAHAJAN ADV
37, LGF, VINOBAPURI,
LAJPAT NAGAR-II NEW
DELHI-110024

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4 Bar Association, CESTAT, Delhi

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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

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

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

13 C.D.R. **14** Office Copy **15** Guard File

Asstt. 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. III

DATE OF HEARING : 27/06/2014.
DATE OF DECISION : 27/06/2014.

Customs COD Application No. 58103 of 2013 in Appeal No. 524 of 2011

[Arising out of the Order-in-Original No. 45/1999 dated 02/12/1999 passed by The Commissioner of Customs and Central Excise, Jaipur.]

For Approval and signature :
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters 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

M/s Flower and Tissue India Ltd. Appellant

Versus

CC, Jaipur Respondent

Appearance

Shri Jatin Mahajan, Advocate – for the appellant.

Shri Rakesh Puri, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No. 52726/2014 Dated : 27/06/2014

Per. Archana Wadhwa :-

The interesting fact are involved in the present application. It is seen that the appellant filed an appeal on 26th July, 2011 against the order of the Commissioner of Central Excise, Jaipur passed on 02/12/99. The date of receipt of the order was reflected by the appellant, in their memo of appeal, as 25/05/11.

2. The said fact was noticed by the registry and a defect memo was issued to the appellant directing them either to show the proof of receipt of the order on 25/05/11 or to file a COD application. In response to the said defect memo, the appellant enclosed an affidavit in respect of their claim that the impugned order was received by them only on 25/05/11. The said affidavit was accepted by the Registrar vide proceedings dated 30/08/11 and the appeal was registered with regular number. The ~~said~~ stay application was posted for hearing on 09/12/11 and stay order was passed on 09/12/11.

3. Thereafter Revenue filed a miscellaneous application drawing the attention to the effect that the appeal was filed in the year 2011 against an order-in-original passed on 02/12/99 and as such there was a delay of around 12-13 years in filing the appeal. The said miscellaneous application was listed and the Tribunal vide order dated 22/03/13 directed the applicant to file a COD application. Accordingly COD application stand filed by the appellant.

4. As per the appellant, they are 100% EOU located at (Bhiwadi) B-493, RIICO Industrial Area, Bhiwadi. On account of failure to carry on their business, their factory had to be shut down and accordingly letter was written to the Development Commissioner on 04/02/97 for debonding of the unit. A copy of the said letter was also given to the Assistant Commissioner, Jaipur, having jurisdiction over their factory. Thereafter it seems that show cause notice was issued on 18/06/99 by addressing the same to their factory address as also to their office premises at Delhi as also at Jaipur. As their factory was admittedly closed they did not receive the notice at their factory. It is also the contention of the learned advocate appearing for the appellant that the notices were also not received at their office address and as such no participation was done by them in the adjudication proceedings. However, the Commissioner, after affording one date of personal hearing, passed the impugned order. As is clear from the impugned order of the Commissioner, the same was sent to their factory address only.

5. It is only subsequently when they approached the Development Commissioner for debonding of the unit, they were advised to taking clearance from the Excise and Customs Department and they approached the Revenue for grant of such clearance, they were told about the present impugned order. Subsequently, the applicant filed ~~the~~ ~~RIT~~ RTI application and procured the order on 25/05/11 and filed the present appeal within the period of three months. As such it is the contention of

the learned advocate that in as much as the period of limitation of three months start running from the date of receipt of the order and the order having been received by them on 25/05/11, and the appeal having been filed within three months, there is no delay requiring any condonation. Alternatively, he prays that the delay even if it is considered to be there ~~done~~, should be condoned in as much as the impugned order stands passed in violation of principles of natural justice and the appellant has a good case on merits.

6. Countering the arguments, learned DR Shri Rakesh Puri though fairly agree that the show cause notice and the order sent to the appellant vide registered AD post ~~and~~ were returned back as the factory was lying closed. Thereafter the show cause notice as also the impugned order were affixed on the gate of the factory in which case the provisions of Section 37C of the Central Excise Act, 1944 should be held to have adhered to and the service should be considered as having been completed. For the above purposes, he relies upon the Hon'ble Punjab & Haryana High Court decision in the case of **CCE, Ludhiana vs. Mohan Bottling Co. (P) Ltd.** reported in **2010 (255) E.L.T. 321 (P&H)**. He also draws our attention to another decision of the Tribunal in the case of **Competent Automobiles Company Ltd.** wherein delay of around 1916 days was not condoned.

7. We have considered the submissions made by both the sides. Some peculiar facts have to be taken note of and

appreciated in the present appeal. The appellant was a 100% EOU and was working under the jurisdiction of Central Excise, Jaipur. As early as on 4th February, 1997 appellant addressed a letter to the Development Commissioner indicating that they are closing down their unit situated at Bhiwadi. A copy of the said letter ~~order~~ was addressed to the Assistant Commissioner at Jaipur. The show cause notice was issued subsequently in the year 1999. It is Revenue's own case that the said show cause notice could not be served to the appellant and as such the copy of the same was ~~had~~ posted at the factory gate. Admittedly, the appellant did not participate in the adjudication proceedings and after affording one date of hearing, the impugned order was passed. Admittedly, the impugned order sent to the appellant vide registered post was received back undelivered and a copy of the same was pasted at the factory gate of the appellant, which was admittedly closed.

8. Technically, as also in terms of the Hon'ble Punjab & Haryana High Court decision in the case of **CCE, Ludhiana vs. Mohan Bottling Co. (P) Ltd.** (supra) the service of the order might have been completed with the pasting of the order on the factory gate. The period of filing appeal against an order start running from the date of communication of the order to the assessee. When admittedly the fact of factory being closed was in the knowledge of the Revenue, surprisingly no efforts were made by the Revenue to serve the copy of the order to the assessee at their alternative addresses. The Revenue thought it fit to paste

the order on the closed gate of the factory and satisfied to have completed their duty. One factory, which needs to be taken into consideration is that during the intervening period of 11 to 12 years, the Revenue has not made any efforts (at least shown to have made on record) to recover the amounts, in question. This fact also supports the appellants stand that they had not received the order in as much as no Departmental officer approached them for recovery of the dues, during the intervening period. It is only when they approached the Development Commissioner for debonding of their unit and were advised to obtain a no clearance certificate from the Revenue, they approached the Revenue and were informed about the passing of the present impugned order. Immediately they procured a copy of the order under RTI application and filed the appeal within the limitation period of three months. As such, we are of the view that either there is no delay in filing the appeal or even if there is a delay, the same is not intentional in as much as the appellant has established that the order was not received by them and as such the same requires condonation. We order accordingly and accept the appeal on record.

9. We also are of the view that the appeal itself can be disposed of at this stage as admittedly (as recorded in the preceding paragraph), the impugned order stand passed without hearing the appellant. In fact as per the appellant even the show cause notice was not received by them. The defence plea of the appellant was also not available before the Adjudicating

Authority. As such we deem it fit to set aside the impugned order and remand the matter to the Commissioner for fresh decision. Learned advocate fairly agrees that they have procured the copy of the show cause notice and will not raise the plea of limitation etc. in receipt of the notice. However, they are free to raise any defence pleas in support of their merits of the case before the Adjudicating Authority. COD application as also the appeal stand disposed of in above manner.

(Dictated and pronounced in open court)

2/7/14

(Archana Wadhwa)
Member (Judicial)

3/7/14

(Rakesh Kumar)
Member (Technical)

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