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REGISTERED / AD

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

To

Dated: 29/04/2015

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

Final Order No. **ST/A/51428/2015-CU[DB]** dated **07/04/2015**

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(CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	ST/Stay/50240/2014	ST/50179/2014	**Bhilai Builders** B-2/11,ravi Bhawan,jaistambh Chowk RAIPUR C.G
			Name and Address of Respondent
2			C.C.E. & S.T.-Raipur CENTRAL EXCISE BUILDING,DHAMTARI ROAD, TIKRAPARA, RAIPUR, CHHATTISGARH-492001

Copy To

3Advocate(s) / Consultant(s):

VKJ Law Officer.Advocate and Solicitors
523,progressive point,dhamtari road ,near wholesale fruit market,lalpur Raipur,C,G-492015

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, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram 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 C.D.R. 15 Office Copy 16 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.

Date of Hearing/Order : 7.4.2015

No. ST/Stay/50240/2014 & ST/50179/2014-CU(DB)

[Arising out of Order-in-Appeal No. 153(ST)/RPR-I/2013 dated 13.9.2013 passed by the Commissioner (Appeals), Central Excise & Customs, Raipur]

For Approval & Signature :

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, 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?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

M/s Bhilai Builders Pvt. Ltd. — Appellant

Vs.

CCE, Raipur — Respondent

Appearance:

Req. on merits - for the Appellant

Shri B.B. Sharma, D.R. - for the Respondent

Coram : **Hon'ble Mr. Justice G. Raghuram, President**
Hon'ble Mr. R.K. Singh, Member (Technical)

F. Order No. 51428/2015.

Per **R.K. Singh :**

Appeal has been preferred against the order in appeal dated 13.9.2013 in terms of which the appellant's appeal before the

Commissioner (Appeals) was dismissed as time-barred having been filed *beyond the time period prescribed under Section 85 of the Finance Act,* 1994. The Commissioner (Appeals) observed that the primary adjudication order was sent to the appellant on 27.1.2012 under speed post and the same was never received back and thus there was a presumption of service. The appeal was filed 453 days after that which is clearly beyond the statutory limit provided under Section 85 ibid. Thus, observing their appeal was rejected by Commissioner (Appeals).

2. No one appeared for hearing before CESTAT but the appellant wrote a letter that its appeal may be decided on merit. The appellant in ~~their~~ its appeal essentially contended that section 37C of the Central Excise Act, 1944 requires the order to be sent by registered post while the order in original was sent by speed post and therefore there cannot be a presumption of service.

3. We have considered the appellant's contention. In the case of ***CCE Vs. Mohan Bottling 2010 (255) E.L.T. 321*** (P & H), the Pubjab & Haryana High Court analysing the issue with reference to Section 27 of the General Clauses Act, Section 144 of the Evidence Act and Section 37 of the Central Excise Act, 1944 held that sending order at correct address by registered post under Registered A.D. is sufficient

for Department. It is deemed served on assessee on date on which it is tendered/delivered by post/copy thereof is affixed to some conspicuous part of factory or warehouse or other place of business. It is for assessee to rebut presumption of service by cogent evidence that in fact order was never served upon him. Assessee's plea that for limitation to appeal, order need to be actually/physically served on them was rejected and view of Larger Bench of Tribunal that despatch of adjudication order by speed post/registered post did not amount to a valid service in absence of proof of actual delivery of speed post was set aside.

4. As regards the contention that the speed post is not registered post and therefore the presumption of services cannot emanate from the fact of having sent the order by speed post, we find that in the case of. ***Jai Bala Jyoti Steel Vs. CCE*** - 2015 (57) STR 673 (Orissa), the Orissa High Court has held that Speed Post is to be treated be registered post and the amendment to section 37C of Central Excise Act, 1944 with effect from 10-5-2013 was clarificatory and procedural and therefore had retrospective effect.

5. We find that appellants have not been able to advance any argument to rebut the presumption of service of the order.

Therefore, we do not find any infirmity in the impugned order in appeal. Consequently the appeal is dismissed.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

RM