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

EXCISE APPEAL BRANCH

Appeal No. E/2450/2007
E/S/2094/07 &

Date 07/12/2007

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

To :
M/S A.S.T. PAPER MILLS LTD.
VILLAGE GAUSPURA, HAMBRAN ROAD, LUDHIANA

M/S A.S.T. PAPER MILLS LTD.

C.C.E. JALLANDHAR(HQ. AT CHANDIGARH)

STAY ORDER NO. 1148/07-EX

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 575/07-EX Excise
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

dated 23-11-07

[Signature]
Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. JALLANDHAR(HQ. AT CHANDIGARH)
C.R.BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH.

2. Adv. / Consult

MR. V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R. Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

[Signature]
Assistant Registrar
(Excise Appeal Branch)

Date of decision : 23.11.2007

Final ORDER NO. 575/2007EX
STAY ORDER NO 1148/07EX
Per S.S.Kang (for the Bench):

The applicant filed this application for waiver of pre-deposit of duty and penalty. The appeal was filed by the appellant was dismissed as time barred by the Commissioner (Appeals). The contention of the applicant is that the issue involved is already settled in their favour in their own case as reported in AST Paper Mills Ltd. vs. CCE, Ludhiana reported in 2007 (209) ELT 467 (tri-Del).

2. The contention is that in fact there is no delay in filing the appeal and even if there is delay of two days, the Commissioner has the power to condone the delay of 30 days. The contention is that adjudication order was received on 9.7.2005 and appeal was filed on 9.9.2005. Therefore, if one day is excluded, in fact there is no delay.

3. The contention of the Revenue is that, the Commissioner (Appeals) has not gone into the merits of the case and rejected the appeal as time barred. We find that the Commissioner (Appeals) was empowered to condone the delay of 30 days as per the provisions of Central Excise Act. In view of the reasons explained by the applicant, it is a fit case for condoning the delay for two days before the Commissioner (Appeals) Therefore, the delay in filing the appeal before the Commissioner is condoned. As the Commissioner (Appeals) has not decided the appeal on merits, the matter is remanded back to Commissioner (Appeals) after waiving the requirement of

pre-deposit of duty and penalty. The matter is remanded to the Commissioner (Appeals) to decide the appeal on merits after affording the opportunity of hearing to the appellant.

(Dictated in the open Court)

(S.S. Kang)
Vice President

(Dr. T.V. Sairam)
Member(Technical)

Date:23.11.07

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