

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

Appeal No. E/2416/2007

Date 01/04/2008

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

To :  
C.C.E. DELHI III

UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ,  
PHASE V, GURGAON - 122016 (HARYANA)  
C.C.E. DELHI III

Appellant

Vs

Respondent

M/S SUN VACCUM FORMERS PVT. LTD.

I am directed to transmit herewith a certified copy of Final order No. 116/08-EX  
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

0 Excise dated 4-2-08



Assistant Registrar

(Excise Appeal Branch)

Copy to :

1. Respondent

M/S SUN VACCUM FORMERS PVT. LTD.  
40, MARUTI INDUSTRIAL AREA, SECTOR 18,  
GURGAON.

2. Adv. / Consult

SH. R. K. HASIJA, ADV.,  
B-6/10, S.J. ENCLAVE,  
N<sup>Y</sup> DELHI - 29

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



Assistant Registrar

(Excise 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. II**

**Excise Appeal No. 2416 of 2007**

[Arising out of the Order-in-Appeal No. 308/SS/GGN/2007 dated 30/05/2007 passed by The Commissioner of Central Excise (Appeals), Delhi-III, Gurgaon.]

For Approval and signature :

**Hon'ble Shri S.S. Kang, Vice President**

**Hon'ble Shri P. Karthikeyan, 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? :
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? :

CCE, Gurgaon

Appellant

Versus

M/s Sun Vaccum Formers Pvt. Ltd.

Respondent

**Appearance**

Shri V.K. Agarwal, Authorized Representative (DR) – for the appellant.

Shri R.K. Hasija, Advocate – for the Respondent.

CORAM : Hon'ble Shri S.S. Kang, Vice President  
Hon'ble Shri P. Karthikeyan, Member (Technical)

**DATE OF HEARING : 04/02/2008.**

/-Tna/ Order No. 416/08-ex Dated : 4-2-08

**Per. S.S. Kang :-**

Heard both sides. Revenue filed this appeal against the impugned order passed by Commissioner (Appeals), whereby the respondents was allowed to take credit in respect of the moulds and dies received from the job worker.

2. Brief facts of the case are that respondents received moulds and dies and availed the credit in respect of the duty payment and the same were sent to the job worker. As the mould and dies was not received back in the factory within one year as provided under Rule 9 of Cenvat Credit Rule, the respondent asked for extension of time and the Commissioner of Central Excise allowed the extension to a certain date. As the moulds and dues were not received back in the factory as

per the period extended by the Commissioner of Central Excise, the revenue asked for duty. The demand of duty was confirmed by the Adjudicating Authority and upheld by the Commissioner (Appeals). The appellant filed appeal before the Tribunal and the Tribunal vide order dated 28/02/05 upheld the demand, however, in respect of the contention of the respondent that goods have been brought back in the factory and respondents are entitled for credit, the Tribunal held that the respondents may seek this relief by making proper prayer before the Competent Authority which will be at liberty to decide as per law.

3. The appellant filed appeal before the Hon'ble High Court and the same was dismissed.

4. Thereafter in pursuance the order passed by the Tribunal, the appellant made a request to avail credit in respect of the duty paid in pursuance to the order passed by the Adjudicating Authority which was upheld by the Tribunal and Hon'ble High Court. The Adjudicating Authority in the

present proceeding rejected the request. The Commissioner (Appeals) on appeal filed by the respondent allowed the same.

5. The contention of revenue is that as the mould and dies were not received in the factory within a period extended by the Commissioner of Central Excise, therefore, duty is payable.

6. The contention of respondent is that they had paid duty in pursuance to the earlier order passed by the Adjudicating Authority and as the mould and dies, thereafter received in the factory, they made a request to avail credit in respect of duty paid in pursuance to the adjudication order within six months from the payment of duty.

7. We find that as respondent has paid duty as the moulds and dies were not received within factory within the extended period. Thereafter moulds and dies were received back in the factory and respondents availed the credit within six months from the date of payment of duty. In these circumstances, we

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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

Date : 16/07/2009

MISC Order No.466/2009-EX

Application E/ROA/66/09-EX

Appeal E/2416/2007 - EX[DB]

1. Appellant

C.C.E. DELHI III

UDYOG MINAR, UDYOG VIHAR, VANIJYA  
NIKUNJ, PHASE V, GURGAON - 122016  
(HARYANA)

2. Respondent

M/S SUN VACCUM FORMERS PVT. LTD.  
40, MARUTI INDUSTRIAL AREA, SECTOR  
18, GURGAON.

3. Adv / Consult :

*SH. R. RAGHVAN, ADV,  
B-6/10, S.J. ENCLAVE,  
N. DELHI-29*

4. C.D.R

5. Bar Association, CESTAT, New Delhi.

6. Director Publications, Customs, Excise. I.P. Estate, New Delhi

7. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah Marg, Opp.  
ICICI Bank of Defence Colony, New Delhi - 110003

8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2 (OLD  
No.36), Vaithyaram Street, T. Nagar, Chennai 600017

9. Raghuraman's, 44 - B, Regal Flat, Shipra  
Suncity, Indirapuram, 201010, Ghaziabad DT, U.P.

10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases,  
B-37, Sector -1, Noida - 201301 Gautam Budh Nagar, (U P)

11. Deeparchie Publications, M-93, Marg. 43, Saket, New Delhi - 110017.

12. Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kunj, New Delhi -110070

13. Taxmann Allied Service Pvt. Ltd., 21/35, West Punjabi Bagh, New Delhi  
-110026

14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above  
Star India Bazar, Satellite Road, Ahmedabad - 15

15. LAWCRUX Advisors (P) Ltd, Law House, 1-8, Sector - 10, Faridabad  
121003 (Haryana)

16. Office Copy

17. Guard File

18. Second Folder

Assistant Registrar

(Excise Appeal Branch)

**CUSTOMS EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL,**

West Block No.2, R.K.Puram, New Delhi

**COURT-I**

**Date of hearing/decision:2.7.2009**

**Restoration Application No.60 of 2009 in  
Central Excise Appeal No.2416 of 2007**

Arising out of the Final Order No.116/2008-EX dated 4.2.2008 passed by the  
CESTAT, New Delhi

C.C.E., Gurgaon ..... Appellant/applicant

Vs.

M/s Sun vaccum Formers Pvt. Ltd. .... Respondent

Appearance:

Shri B.S. Suhag, Authorized Departmental Representative (DR) for the  
Revenue and Shri Ravi Raghvan, Advocate for the respondent

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President  
Hon'ble Shri M. Veeraiyan, Member (Technical)

*misc* Oral Order No. 466/09-EX

Per Shri Justice R.M.S. Khandeparkar:

Heard. The applicant seeks modification of the order dated 4.2.2008  
passed by the Tribunal in Excise Appeal No.2416/07.

2. It is the contention on behalf of the appellant that in para 7 of the said  
order, it has been recorded "Thereafter moulds and dies were received back  
in the factory and respondents availed the credit within six months from the  
date of payment of duty".

3. It is the contention on behalf of the appellant that there was no  
specific period prescribed for availing the benefit of credit and it ought to  
have been taken within reasonable time and that was a mistake on behalf  
of the Tribunal in recording the period of six months.

4. The application has been filed on 15.5.2009. As already stated above,  
the order sought to be modified is dated 4.2.2008. On the face of it the  
application has been filed beyond the period of six months which is the outer  
limit for filing such application.

5. There is no application for condonation of delay. It is further sought to be contended that pursuant to the order of the High Court of Punjab & Haryana passed on 5.2.2009, the present application has been filed.

6. The order dated 5.2.2009 nowhere permits the appellant to file an application beyond the period of limitation. The law is well settled that the statutory period prescribed for initiating action in a Court or Tribunal cannot be extended by any Court or Tribunal, as the case may be. The discretionary power is vested in the Tribunal to condone the delay. Whenever there is delay in initiating the proceeding, the applicant is expected to seek condonation of delay by disclosing sufficient cause for delay. The contention that pursuant to the order of the High Court, the present application has been filed and the same is within reasonable time therefrom and therefore, is not hit by law of limitation, cannot be accepted. On the ground of being barred by law of limitation itself, the application is liable to be dismissed.

7. Even otherwise, the ground which is disclosed for modification of the order cannot be a ground which would justify interference in the order passed by the Tribunal on 4.2.2008 under the garb of exercise of powers for modification. Assuming that there is mistake in the order, the finding arrived at on assessment of materials on record, can be rectified only by the appellate authority. When there is error apparent from record that can be the subject matter of modification. That being not the case in the matter in hand, the question of modification of the order does not arise.

8. It is pertinent to note that the order was dictated and pronounced in the open Court. Even if there was factual mistake in recording, nobody prevented the representative of the parties to point out the same to the Tribunal or to move the Tribunal immediately after the copy of the order was available.

9. It is also pertinent to note that the applicant approached the High Court of Punjab & Haryana against the impugned order without any success. We are surprised to note that before the High Court, the department had presented the matter as if there was factual mistake in Tribunal's order,

whereas in the application before the Tribunal it is the case of failure to take stock of materials on record. These are two different grounds. In the circumstances, there is no merit in the case for modification of the said order. The application is, therefore, dismissed.

(Justice R.M.S. Khandeparkar)  
President

(M. Veeraiyan)  
Member (Technical)

scd/