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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/486 /2009 - EX[DB]
E/S/500/2009-EX
E/M/418/2009-EX

Date 20/05/2009

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

To : -
M/S SAMBHAV SPINNING MILLS,
(A UNIT OF NAHAR INDUSTRIAL ENTERPRISES
LTD.), PHASE-VIII, FOCAL POINT, LUDHIANA.
M/S SAMBHAV SPINNING MILLS, Appellant

Vs

C.C.E. CHANDIGARH Respondent

STAY ORDER NO.440/2009-EX
MISC ORDER NO. 325/2009-EX

I am directed to transmit herewith a certified copy of **Final order No.** 365/2009-**EX[DB]** dated 6-5-09

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult SH. RUPENDER SINGH, ADV,
3015, SECTOR-27-D, CHANDIGARH

3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
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, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, 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 Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file
18. HPN'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K. Puram, New Delhi - 110066

COURT-I

Date of hearing/pronouncement:6.5.2009

Miscellaneous Application No.418 of 2009
Stay Application No.500 of 2009 and
Central Excise Appeal No.486 of 2009

Arising out of the order in appeal No.389/CE/LDH/2008 dated 28.11.2008 passed by the Commissioner of Central Excise (Appeals), Chandigarh.

For Approval and Signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, 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?	Yes
2	Whether it should be released under Rule 27 of 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 Departmental authorities?	Yes

M/s Sambhav Spinning Mills ..... Appellant

Vs.

C.C.E.,
Chandigarh ...... Respondent

Appearance:

Shri Rupender Singh, Advocate for the appellant(s) and
Shri A.K. Rastogi, Authorized Departmental Representative (DR) for the Revenue

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

MISC ORDER NO 325/09-EX
FINAL Oral Order No. 365/09-EX
STAY ORDER NO 440/09-EX

Per Shri Justice R.M.S. Khandeparkar:

Heard the learned Advocate for the appellant and the learned DR.

2. The present appeal and the applications therein , in our considered opinion, deserve to be disposed of forthwith and remand the matter to the Commissioner (Appeals) to deal with the appeal before the lower appellate authority on merits.

3. The records disclose that the appeal was dismissed by the Commissioner (Appeals) only on the ground that there was delay of 14 days in filing appeal and there was no application for condonation of delay filed by the appellant. It is however, the case of the appellant that there was no delay considering the period which was spent between the date of receipt of the order of the lower authority by the appellant and the day on which appeal was filed before the Commissioner (Appeals). In the background of this situation, in our considered opinion, no purpose would be served by keeping the appeal pending and merely dealing with the stay application. We, therefore, allow the application for stay and waive the requirement of pre-deposit under Section 35F and proceed to dispose of the appeal itself forthwith.

4. Undisputedly, what was sought to be challenged before the Commissioner (Appeals) was an order dated 4.6.08 of the adjudicating authority. It is the case of the department that the copy of the said order was dispatched by speed post to the appellant on 5.6.08. The appeal was filed on 13.8.08. These facts are clearly born out from the records. While it is the case of the department that since the copy of the order was dispatched by speed post on 5.6.08, the appellant must have received the same within 2/3 days therefrom, whereas it is the case of the appellant that the same was received by the appellant only on 18.6.08. The appellant has produced copy of their inward register in that regard.

5. Undisputedly, the appellant had not produced any documentary proof regarding the receipt of the copy of the order on 18.6.08 before the Commissioner (Appeals). However, it is the contention on behalf of the appellant that when the matter had come up for hearing before Commissioner (Appeals), they had orally prayed for time to produce such document and they had accordingly written a letter to the authority apart from visiting the department's office and had met the Superintendent to ascertain the exact date of receipt of the copy of the order by the appellant as also the proof in that regard. The Commissioner (Appeals) however, in the meanwhile dismissed the appeal by order dated 28.11.08,

6. Records undoubtedly disclose that hearing of the matter took place on 6.11.08 and order records that no material was placed by the appellant in support of their of contention of delay in receipt of the copy of the order. However, the impugned order also discloses that in the course of hearing, the appellant had submitted before the Commissioner (Appeals) that they would explain the gap of 14 days being the period between the date of dispatch and the date of receipt of the order by the appellant. Undoubtedly, no material was submitted till the date of passing of the order. At the same time, records apparently disclose that the appellant had made efforts to collect the necessary evidence in that regard apart from the existing documents which were maintained by the appellant in the ordinary course of business i.e. inward register maintained by the appellant. The copy of the said register relating to 14.6.08 till 21.6.08 which contains various entries in respect of the correspondence received by the appellant during the said period, reveals that on 18.6.08, they had received, from Central Excise Commissioner, a letter dated 4.6.08. It is not the case of the department that apart from the order passed which was the subject matter of appeal before Commissioner (Appeals), they had posted any other letter dated 4.6.08 to the appellant. Considering the same and considering the fact that inward register was maintained in the ordinary course of business, it would reveal sufficient evidence about the receipt of the copy of the order dated 4.6.08 by the appellant on 18.6.08. Undoubtedly, the factual aspect in this regard has been corroborated by affidavit of the appellant filed in this Tribunal.

7. Undoubtedly, the said documents were not before the Commissioner (Appeals). However, at the same time, the impugned order clearly records that the appellant had volunteered to explain the gap of 14 days. It is also true that by 20.11.2000 the appellant did not produce any material in relation to the said assurance given by the appellant. However, to non-suit the appellant on account of non- production of material ~~without~~ within short space of time could be great injustice to the appellant.

8. It is also not to be forgotten that the copy of the order was dispatched under speed post. Being so, though there is presumption about the receipt of the copy of the order by the addressee, there is no presumption as regards the date of receipt of the order nor there was any documentary evidence produced by the department particularly in respect of the date of receipt of the order by the appellant.

9. As the copy of the order was received by the appellant on 18.6.08 and the appeal was filed on 13.8.08 that is within 60 days, there was no delay in filing appeal and hence there was no question of any condonation of delay as such. In the circumstances, the Commissioner (Appeals) has to proceed to hear the matter in accordance with law on consideration that there was no delay in filing appeal.

10. Taking into consideration the above facts, therefore, in our considered opinion, the appellant has made out a case for granting the miscellaneous application filed in the appeal and allowing the appeal as well as setting aside the impugned order.

11. In the circumstances, we hereby allow the miscellaneous application. We also allow the appeal and set aside the impugned order and remand the matter for consideration thereof in accordance with the provisions of law. Needless to say that the application for stay which was filed by the appellant before Commissioner (Appeals) should be considered within 30 days from date of receipt of this order.

12. The Appeal and the applications are accordingly disposed of in above terms.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

scd/