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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/982 /2009 - EX[DB]   Date 01/07/2009

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

To :
ABHISHEK INDUSTRIES LTD
E - 212, KITCHLU NAGAR.LUDIANA   Appellant
ABHISHEK INDUSTRIES LTD   Vs
C.C.E. CHANDIGARH   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 440 2009 **EX[DB]** dated 26.6.09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944 Alongwith S.O.No.668/09-Ex.

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

3 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

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram,
NEW DELHI

COURT NO. III

E/Stay application No. 943 of 2009 in and
Central Excise appeal No. 982 of 2009-Ex

[Arising out of common Order-in-Appeal No. 399/CE/Ldh/2008 dated 19.12.2008 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical);
Hon'ble Mr. P.K. Das, Member (Judicial)

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 Departmental authorities?	Yes

M/s. Abhishek Industries Ltd. — Appellant

Vs.

CCE, Chandigarh — Respondent

Appearance:

Shri Sanjay Malhotra, Employee of the appellant company;
Shri B.K. Singh, Jt. C.D.R. for the Revenue

Coram:

Hon'ble Mr. M. Veeraiyan, Member (Technical);
Hon'ble Mr. P.K. Das, Member (Judicial)

Date of Hearing/decision: 26th June, 2009

STAY ORDER NO. 668/09-EX dated 26.6-09

FINAL ORDER NO. 440/09-EX dated 26.6-09

Per M. Veeraiyan:

Heard both sides for a while on stay petition. As we felt that the matter could be finally decided on a short point, we waive pre-deposit of dues as per impugned order and proceed to decide the matter finally.

2.The relevant facts of the case, in brief, are that the order of the original authority is dated 3.4.2008 and it is claimed by the department that the said order was handed over to the postal department on 3.4.2008 itself at 17.03 hrs. and the same should have been received by the appellant within a reasonable time and the appeal having been filed on 6th August, 2008 is barred by limitation as the Commissioner (Appeals) do not have power to condone the delay in filing the appeal beyond 30 days. The case of the appellant is that they replied to the notice on 27.2.2008 and appeared for personal hearing on 30.3.2008. They did not receive the order till 28.7.2008 and only after writing a letter dated 28.7.2008, they received copy of the order-in-original on that day and, filed the appeal on 6th August, 2008 well within the time prescribed for filing the appeal.

3. We have carefully considered the submissions from both sides. The Commissioner (Appeals) has held that "Prima facie this appears to be a delayed appeal" He has gone by the presumption that there was a speed post addressed to the party on 3.4.2008. It should have been the order-in-original dated 3.4.2008 which was dispatched and should have been received within the reasonable time. There is no categorical finding on his part on the date of service of the order of the original authority by the appellant party. There is no evidence that whatever dispatched on 3.4.2008 addressed to the party is indeed the order of the original authority. This gives rise some doubt in our mind. Further, the Commissioner's order is also not categorical about the service of the order on a particular date. In the absence of evidence of service, we are of the considered view that the benefit of doubt should be given to the appellant. Further, there is no explanation as to why the Order-in-Original was not dispatched under Registered Post with Acknowledgement Due as provided under Section 37C of the Central Excise Act.

4. At this stage learned Jt. CDR submits that his prayer for giving time to produce evidence should be considered. Since we have already noted that the decision of the Commissioner (Appeals) was based on

presumption, we feel that the request of the learned Jt. CDR need not to be accepted.

5. In the light of above, we set aside the order of the Commissioner (Appeals) and remand the matter to the Commissioner (Appeals) to decide the matter afresh treating the appeal as filed within time as per law. He is free to decide the stay petition, if any, filed before him.

6. Appeal is allowed by way of remand. Stay petition is also disposed of.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK