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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

Appl. No. E/1830/2009 - EX[DB]
E/S/1893/2009-EX

Date 24/08/2009

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

To :
M/S J K OIL INDUSTRIES
INDUSTRIAL AREA,GANGYAL, JAMMU(J&K)

M/S J K OIL INDUSTRIES — Appellant

Vs

C.C.E. JAMMU — STAY ORDER NO.824/2009-EX — Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 538/2009- **EX[DB]** dated 20-8-09

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. JAMMU
   OB-32, RAIL HEAD COMPLEX, JAMMU - 180012.
2. Adv. / Consult
   MR.G.S SANDHE
   163/D, MODEL TOWN, PATIYALA
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. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 1830 of 2009 with
Excise Stay Application No. 1893 of 2009

(Arising out of Order-in-Appeal No. 355/CE/CHD-II/(J&K) 2009 dated 16.04.2009 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh-II).

DATE OF HEARING : 17.08.2009
DATE OF DECISION : 17.08.2009

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT
HON'BLE MR. B.S.V. MURTHY, 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 should 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 Departmental Authorities?	

M/s J.K. Oil Industries .... **Appellants**
(Rep by Sh. G.S. Somdhe, Adv.)

VERSUS

CCE, Jammu .... **Respondent**
(Rep. by Sh. Anil Khanna, DR)

CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT
HON'BLE MR. BSV MURTHY, MEMBER (TECHNICAL)

FINAL ORAL ORDER NO. 538/09-EX
STAY ORAL ORDER No. 824/09-EX

PER B.S.V. MURTHY :

The learned advocate for the appellants submits that, the impugned order has been passed on the ground of delay in filing the appeal. The Commissioner (Appeals) for this purpose has relied upon a letter written by the Superintendent of Central Excise dated 26.09.2008 wherein he had reiterated that order-in-original had been despatch on 31st March, 2008 itself and he had sent a copy to the appellants. It is submitted that Section 37-C of the Central Excise Act, 1944 speaks about the procedure for service ~~to~~ of decisions, orders, summons etc. and in terms of the ~~instructions~~ Section, the order should have been sent by Regd. Post with acknowledgement due. In the absence of any evidence to show that this requirement has been fulfilled, he submitted that their claim that they had issued the order on 26.09.2008 and, therefore, appeal was in time, should have been considered by the Commissioner (Appeals).

2. We find that there is no evidence to show that the order-in-original has been served by Regd. Post with acknowledgement due, as required in clause (a) of Section 37-C of the Central Excise Act, 1944. Therefore, we take up the appeal as well as the stay application for disposal and remand the matter to the Commissioner (Appeals) with a direction to decide the appeal treating the same as having been filed within time. Both the appeal and the stay petitions are disposed of accordingly.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(B.S.V. MURTHY)
MEMBER (TECHNICAL)

Golay