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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/255 /2009-256 /2009 - EX[DB]
E/S/257-258/2009-EX

Date 02/09/2009

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

INDIAN SULPHACID INDUSTRIES LTD.,
4, DEEN DAYAL UPADHAYA MARG, NEW DELHI-
110002.

M/S INDIAN SULPHACID INDUSTRIES LTD., Appellant

Vs

C.C.E. PANCHKULA STAY ORDER NO.867-868/2009-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 604-605/2009- **EX[DB]** dated 21-7-09

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. PANCHKULA
   SCO NO. 407 AND 408, SECTOR 8, PANCHKULA (HARYANA) 134119.
2. Adv. / Consult
   MR.PRABHAT KUMAR
   B-51(BASEMENT)SARVODAYA ENCLAVE NEAR MOTHER INTERNATIONAL SCHOOL NEW DELHI
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)

19. MR. P.MODY, CHAIRMAN, OF
    M/S INDIAN SULPHACID INDUSTRIES LTD.,
    4, DEEN DAYAL UPADHAYA MARG, NEW DELHI-110002.

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

COURT-I

Date of hearing/decision: 21.07.2009

Excise Appeal No. 255 of 2009
[Arising out of order-in-appeal No. 287-288/ANS/PCK/2008 dated 18.12.2008 passed by the Commissioner (Appeals), Central Excise, Delhi-II]

M/s Indian Sulphacid Industries Limited — Appellant

Vs.

CCE, Panchkula — Respondent

AND

Excise Appeal No. 256 of 2009
[Arising out of order-in-appeal No. 287-288/ANS/PCK/2008 dated 18.12.2008 passed by the Commissioner (Appeals), Central Excise, Delhi-II]

P. Mody, Chairman of
M/s Indian Sulphacid Industries Limited — Appellant

Vs.

CCE, Panchkula — Respondent

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, 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.	Yes
2	Whether it should 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?	No

Appearance:

Appeared for the Appellant – Shri Prabhat Kumar, Advocate
Appeared for the Respondent – Shri R.K. Verma, DR

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

Final Oral Order No. 604-605/09-EX

Per Shri Justice R.M.S. Khandeparkar:

Since common questions of law and facts arise in both these appeals, they were taken up for hearing together and are being disposed of by this common order. Both the appeals were taken up for hearing pursuant to the order passed today in the stay application No. 257 & 258 of 2009.

2. We have heard at length learned Advocate for the appellants and learned DR for the respondent. By the present appeals, the appellants challenge the order dated 18.12.2008 passed by the Commissioner (Appeals), Delhi whereby the appeals filed by the appellants have been dismissed while rejecting the request for condonation of delay in filing the appeals.

3. Few facts relevant for the decision are that a show cause notice dated 13.03.2001 came to be issued requiring the appellants to show cause as to why the duty to the tune of Rs.17,49,068/- for the year 1995-96 and 1996-97 should not be demanded from them on the allegation that they had suppressed the production of sulphuric acid and alum ferric falling under chapter 28 of the First Schedule of the Central Excise Tariff Act, 1985 and that the same was revealed from the balance sheets for the year 1995-96 and 1996-97 vis-à-vis production reported in the statutory records maintained by the appellants. Another show cause notice dated 14.12.2001 demanding duty to the tune of Rs. 11,09,068/- came to be issued, though, the same was subsequently withdrawn under letter dated 21.02.2002. The appellant did not file any reply to either of the show cause notices dated 13.03.2001 or dated 14.12.2001. Consequent to the withdrawal of show cause notice dated 14.12.2001, and in view of failure on the part of the appellants to file reply to the show cause notice, the adjudicating authority while allowing the request made by the appellants under letter dated 28.03.2001 granted further time to the appellants to file the reply. However, the appellants did not avail the said

opportunity and did not file the reply. Inspite of that there was reminder sent by the adjudicating authority under letter dated 21.06.2001 granting further ten days time to file reply. The matter ultimately proceeded ex-parte as the appellants had failed even to appear for personal hearing. The show cause notice dated 13.03.2001 was thus finally adjudicated under order dated 05.09.2001 confirming the duty liability to the tune of Rs. 17,49,068/- with equivalent amount of penalty under Rule 173Q of the erstwhile Central Excise Rules, 1944 read with Section 11AC of the Central Excise Act, 1944. Simultaneously, the penalty was also imposed on the Director of the company to the tune of Rs. 3 lakh.

4. Being aggrieved by the said order, the appellants preferred appeals to the Commissioner (Appeals). However, by order dated 02.09.2003 the Commissioner (Appeals) dismissed the same by observing that they were barred by law of limitation. Being aggrieved, the appellants approached the High Court of Punjab & Haryana in Writ Petition No. 1139/04 and by order dated 11.10.07 the Hon'ble High Court directed the Commissioner (Appeals) to decide the matter in relation to the point of limitation after taking into consideration the case of the appellants for condonation of delay. The order of the High Court reads thus:-

> "........ The Commissioner (Appeals) to consider the case of the petitioners by taking into account the fact as to whether the petitioners were prevented by sufficient cause from filing the appeal. If the Commissioner (Appeals) finds sufficient cause for delay in filing of the appeal within the meaning of section 5 of the 1963 Act then he will proceed to decide the appeals on merits. The petitioners are also granted liberty to file an appropriate application to explain the delay in filing of appeal".

5. The appellants did not file any fresh application for condonation of delay and were content to place reliance in the averments made in the memo of appeal which was filed before the Commissioner (Appeals). The Commissioner (Appeals) after hearing the appellants by impugned order held that the appellants

had failed to disclose sufficient cause for delay and, therefore, dismissed the appeals.

6. It is the case of the appellants that their factory was closed for considerable time and particularly at the relevant time, and the order of the adjudicating authority though was passed on 05.09.2001, the copy thereof could be received by the appellants only on 25.12.2002. It was only thereafter, that is, on 01.07.2003 the appeal could be filed. Meanwhile the papers relating to the copy of the order of the adjudicating authority were misplaced in the office of the Advocate for the appellants and therefore there was delay of about four months in filing the appeals. On the other hand, it is the case of the respondents that the Commissioner (Appeals) could condone the delay to the extent of 30 days beyond the prescribed period of limitation for filing the appeals and therefore, there was no occasion for the Commissioner (Appeals) to condone such a long period of delay and the law in that regard is well settled by the decision of the Hon'ble Supreme Court.

7. Learned Advocate for the appellants while relying upon the decisions in the matter of Banshidhar Sewbhagovan & Co. vs. Collector of Central Excise reported in 1990 (50) ELT 192 (SC), Jamuna Industries vs. CCE, Jaipur-II reported in 2002 (148) ELT 1144 (Tri.Del.), Pijush Kanti Nath vs. CC (Prev.) W.B. reported in 2002 (149) ELT 479 (Tri.-Kolkata), Coronation Spinning India vs. CC, Calcutta reported in 1999 (113) ELT 376 (S.C.), SAP India Sys. Applications & Products in Data Processing P. Ltd. vs. CST Bangalore reported in 2007 (6) STR 42 (Tri.Bang.), Bansal Plywood Industries vs. CCE, Delhi reported in 1996 (85) ELT 318 (Tri.), Modern Malleables Ltd. vs. CCE, Calcutta-II reported in 2001 (127) ELT 872 (Tri.Cal.), Standard Treads Pvt. Ltd., vs. CCE, Cochin reported in 1996 (83) ELT 30 (Ker.) and CCE, Nagpur vs. Vidarbha Winding Wires Ltd. reported in 2008 (229) ELT 218 (Tri.Mumbai) submitted that taking into consideration the relevant fact that the factory of the appellants was closed and there was nobody to look after the factory, and the fact that the delay was caused primarily on account

of misplacement of the copy of the impugned order in the office of the Advocate, the appellants ought not to be penalized for the same. It is his further submission that as far as the appellants are concerned, they had taken prompt steps to file the appeal in the matter and that it was on account of failure on the part of the Advocate to prepare the appeal in time and to file the same that there was delay of four months and same deserves to be condoned. He further submitted that the decision of the Apex Court on the point of jurisdiction of the Commissioner to condone the delay beyond the period of 30 days could not come in the way of the lower authority in view of specific direction in that regard by the High Court. He further submitted that though the order of Hon'ble High Court has been challenged by the Department before the Apex Court, there has been no stay granted to the order of the Hon'ble High Court. He also submitted that while dealing with the issue of condonation of delay, the authority has also to consider as to whether the appellants have a good case on merits and considering the fact that in the matter in hand entire basis for fixing the duty liability being on the basis of the figures in the balance sheet, bearing in mind the decision of the Tribunal in Vidarbha Winding Wires Ltd. case, the authority should have considered that the appellants have a good case on merits. He, therefore, submitted that the appellants had disclosed sufficient cause for condonation of the delay, but the authority below failed to take note thereof.

8. Learned DR on the other hand submitted that the authority below after taking into consideration the facts placed on record arrived at the finding about failure on the part of the appellants to establish sufficient cause for condonation of delay and in that regard it is not the case of the appellants that there is arbitrary exercise of the jurisdiction by the authority. Besides, considering the decision of the Apex Court in the matter of Singh Enterprises vs. CCE, Jamshedpur reported in 2008 (221) ELT 163 (SC), no fault can be found with the impugned order refusing the condonation of the delay. He further submitted that the materials

placed on record do not justify condonation of delay of undue long period of four months.

9. Undoubtedly, the Apex Court in Singh Enterprises case while dealing with the scope of powers of the Commissioner (Appeals) under section 35 of the Central Excise Act, 1944 had ruled that the proviso to sub-section (1) of Section 35 makes it crystal clear that the Commissioner (Appeals) has no power to allow the appeal to be presented beyond the period of ninety days. It was clearly held that-

> "8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, **this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days.** The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period".

[Emphasis supplied]

10. Undoubtedly, therefore, the law on the point as to whether the Commissioner (Appeals) can condone the delay beyond the period of 30 days after the expiry of the limitation period prescribed for filing the appeal before it, is well settled and it states that the Commissioner (Appeals) has no such power in that regard after the expiry of the said period.

11. But in the case in hand, it is a matter of record that the Hon'ble High Court of Punjab and Haryana by order dated 11.10.2007 had directed the Commissioner (Appeals) to consider the request for condonation of delay by taking into consideration the cause disclosed by the appellants in the matter. While issuing the said direction no restrictions were imposed, as regards the period to the extent the Commissioner (Appeals) could condone the delay. Undoubtedly, as already observed above the law laid-down by the Apex Court is binding on all the parties. It is a matter of fact that the Hon'ble High Court of Punjab and Haryana while exercising the power under Article 226 of the Constitution issued specific direction to the concerned authorities. It is also apparent that the decision of the Apex Court in Singh Enterprises (supra) was delivered after the directions were issued by the Hon'ble High Court of Punjab and Haryana in the matter in hand. At the same time, though the respondent have sought to challenge the order of the High Court before the Apex Court, admittedly, the Department has not been able to get any stay to the order passed by the Hon'ble High Court of Punjab and Haryana. In these circumstances, the Commissioner (Appeals) could not be blamed for having proceeded to decide the matter in terms of the direction issued under the order passed by the Hon'ble High Court of Punjab and Haryana.

12. The entire basis for condonation of delay of about four months were disclosed in the memo of appeal which was filed by the appellants before the Commissioner (Appeals) and it reads thus:-

> "ISIL was under the bonafide belief and impression that the first notice dated 13.3.2001 was followed by the second notice dated 14.12.2001, and

since the second notice dated 14.12.2001 was withdrawn by the department, the proceeding initiated by the said notices do not survive. ISIL sought for advice, when ISIL and its Chairman were advised to file separate appeals before the Appellate Authority for setting aside the said order dated 05.09.2001. ISIL as per advice instructed their Advocate to prepare and file appeals before the Commissioner (Appeals), Central Excise and handed over all documents. The said paper/ documents were misplaced/ mixed-up in the office of the Ld. Advocate. The files and the papers could be traced out only in or about 18.06.2003 and the appeals were thereafter filed on 01.07.2003. Delay in filing the appeal was not intentional and can be condoned. Copy of written submission made by learned advocate for condonation of delay is annexed here to be marked as Annexure-6".

13. The ground for condonation of delay, therefore, is that the appellants were under bonafide belief and impression that even the first show cause notice might have been withdrawn alongwith second show cause notice and on that count the appellants believed that there was no need to file the appeal. Secondly, having realized the said mistake and on obtaining the advice from the Advocate, the copy of the order alongwith documents was entrusted to the Advocate who misplaced the same in his office and it is only after those papers were traced out on or about 18.06.2003, the appeal could be filed on 01.07.2003.

14. The averments in the appeal nowhere disclose as to when the copy of the order was entrusted to the Advocate for the appellants for the purpose of preparation of the appeal. However, the records disclose that the copy of the order was received by the appellants on 25.12.2002 but the same was entrusted to their Advocate only on 20.02.2003. There is absolutely no explanation on record as to what prevented the appellants from entrusting the copy of the order to the Advocate prior to 20.02.2003.

15. The records further disclose that the learned Advocate for the appellants had entrusted the copy to his junior Advocate for the purpose of preparing the appeal and it was the case of the learned Advocate of the appellants that his junior misplaced the same and it could be traced on or about 10.06.2003 and thereafter appeal was prepared and filed. The records further disclose that though it was sought to be contended by the appellants that the copy of the order was received on 25.12.2002, it was factually received on 20.12.2002. All these facts also stand verified and confirmed by the Commissioner (Appeals) in his order dated 02.09.2003.

16. It is pertinent to note that the appellants had not filed any affidavit either of his Advocate or junior advocate or even Clerk of the Advocate. Undisputedly, the alleged fact of misplacement of the copy of the order is not within the knowledge of the appellants. It is also not within the knowledge of the Advocate because it was the contention by the Advocate before the Commissioner (Appeals) that it was misplaced by his junior. The records also nowhere disclose as to whether any attempt was made to trace out the papers prior to 10.06.2003. Records also nowhere disclose that any attempt was made by the appellants to get another copy of the impugned order consequent to alleged misplacement of the copy of the order which was received by the appellants on 20.12.2002.

17. The records further disclose that the copy of the order was entrusted to the Advocate by the appellant on 20.02.2003 i.e. exactly after the expiry of period of limitation for filing the appeal. There is no explanation as to what prevented the appellants from engaging the Advocate within the period of limitation.

18. It is however contention on behalf of the appellants that the appellants were under impression that in view of withdrawal of the second show cause notice there was no need to file the appeal. The contention is absolutely devoid of substance for two reasons. The letter dated 25.02.2002 specifically referred to the withdrawal

of the second show cause notice and it specifically disclosed not only the date of the show cause notice but also the number of the show cause notice which was withdrawn and the said number and date were different from those of the first show cause notice. Secondly, admittedly the copy of the order was passed on adjudication of the first show cause notice was served upon the appellant on 20.12.2002 or at least on 25.12.2002 as sought to be contended by the appellants. In another words, in any case by 25.12.2002 it was within the knowledge of the appellants that the first show cause notice had been adjudicated upon against the appellants. Thirdly, that appellants themselves had requested for further time to file the reply to the show cause notice under letter dated 28.03.2001. Being so, the contention that the appellants were under impression that alongwith second show cause notice the first show cause notice also might have been withdrawn is totally devoid of substance. The appellants having obtained further time to file the reply to the first show cause notice, one fails to understand as to how the appellants could have been under impression that alonwtih the second show cause notice, the first show cause notice was also withdrawn. In any case even after failure to file reply pursuant to the grant of time, the adjudicating authority had again issued a letter granting ten days time to file reply, even then the appellants failed to file the reply. Being so, there is absolutely no substance in the ground alleged for condonation of delay. In this background of the facts, we do not find that the Commissioner (Appeals) having committed any error in analyzing the materials on record while arriving at the finding that the appellants have failed to show sufficient cause for condonation of delay.

19. It was further sought to be contended on behalf of the appellants that delay was essentially on account of negligence on the part of the learned Advocate inasmuch as that there was misplacement of the copy of order in the office of the learned Advocate and therefore for the mistake on the part of the advocate, the

appellants should not be penalized and appellants having a good case on merits, the delay needs to be condoned.

20. As already seen above as regards the alleged negligence on the part of the learned Advocate in misplacement of the copy of the order, apart from the mere allegation in that regard, no cogent material is placed on record to believe the said allegation. In the absence of either an affidavit of the concerned Advocate or his junior or his Clerk and in the absence of personal knowledge of the alleged fact to the appellants, mere allegation in that regard by the appellants cannot be believed.

21. The decision of the Apex Court in Bansidhar Sewbhagovan & Co. case was on the basis of the facts of that case which established that there was some negligence on the part of the Counsel who had appeared before the Tribunal as he had failed to appear on the relevant day and, therefore, there was dismissal of the matter and in that regard the order of refusal to restore the appeal was held to be bad. That was totally different case apart from the fact that the records therein were sufficient to establish that there was negligence on the part of the Advocate of the party.

22. In Jamuna Industries case, the Tribunal had found that the delay in filing the appeal was squarely attributable to the negligence of the Advocate who himself had filed the application for condonation of the delay without the knowledge thereof to the appellant in that case. In that connection, it was observed that on account of late filing of the appeal by the Advocate, the appellants could not be said to stand to gain, rather they would loose and therefore, relying upon the decision of the Apex Court in the case of Bansidhar Sewbhagovan & Co. case, the delay was ordered to be condoned.

23. In Pijush Kanti Nath case there was an affidavit filed by the concerned Advocate and it was only after going through her affidavit, the Tribunal found that

the reason for not filing the appeal in time was on account of misplacement of appeal papers by the concerned Advocate in her chamber.

24. In SAP India Sys. Applications & Products in Data Processing P. Ltd., the condonation was sought on the ground that Chief Financial Officer of the Company had left the company without handing over the papers and during his tenure he was exclusively looking after service tax matters and it was in the background of those facts that the delay had occurred, and that therefore the same was condoned.

25. In Bansal Plywood Industries case the fact that papers were lying with the counsel for the party was clearly established by the letter dated 31.8.1991 written by the Advocate himself.

26. In Standard Treads Pvt. Ltd. case, there was no conclusive evidence of service of the copy of the order upon the party and in that context, delay was ordered to be condoned.

27. In Modern Malleables Limited case the Advocate for the appellant had undergone heart operation during the relevant time and though no documentary evidence in this regard was placed, oral submissions of the Advocate himself were relied upon. Once the Advocate himself had made the said submission before the Court regarding his own sickness and that was the ground for condonation of delay, the same was accepted by the Tribunal in its discretion,

28. None of the above decisions lend any support to the contentions sought to be canvassed on behalf of the appellants in the case in hand. All those decisions were given in the peculiar facts of each case. The decisions clearly disclosed that the negligence of the Advocate was clearly established either by way of documentary evidence or by the oral submission by the Advocate himself in the case. That is not the case in the matter in hand.

29. It was then sought to be contended that the appellants have a good case on merits and the decision having been based on the figures disclosed in the balance sheet, taking into consideration the decision of the Tribunal in Vidarbha Winding Wires Ltd. case, the authority ought to have condoned the delay. Attention was sought to be drawn to para 12 and 13 of the said decision. It is pertinent to note that the observation in para 12 itself disclose that the decision was in totally different set of facts. It was observed by the Tribunal in para 12 that "We find that as regards the allegation that as per the Balance sheet, the respondents had consumed 85,612 Kgs. of raw materials in excess over what was shown in the excise records, the explanation of the respondents is that in the Balance sheet, while showing the quantity of copper wire consumed, the chartered accountant had inadvertently also clubbed the figures of 85,612 Kgs. of copper wire which had been bought and sold by them as a part of their trading activity". Apparently therefore, that was a case where the party had contested the proceedings and had shown to the adjudicating authority as to why the figures disclosed in the balance sheet could not be relied upon. That is not the case in the matter in hand.

30. It is however sought to be contended on behalf of the appellants that they were not granted opportunity to place on record any material in that regard. The contention is totally devoid of substance and per se contrary to records. The order passed by the adjudicating authority clearly discloses that sufficient opportunity was given to the appellants to putforth their case, however, the opportunity was never availed by the appellants. The appellants even did not file their reply to the show cause notice. The time was granted not only once, but thrice. Firstly when the notice was served, secondly when there was specific request for extension of time to file the reply under their letter dated 28.03.2001 and thirdly when the Additional Commissioner himself granted further time of ten days by issuing letter dated 21.06.2001. If the appellants themselves had decided not to

co-operate with the adjudicating authority by abstaining themselves and failing to disclose their defence, it is too late for the appellants to allege that the appellants were not granted opportunity to putforth their defence in the matter. In our considered opinion, therefore, the decision of the Tribunal in Vidarbha Winding Wires Ltd. is of no help to the appellants in the case in hand.

31. It was also sought to be submitted by the learned Advocate for the appellants that the appellants have cited one decision as a sample case but there are large number of decisions on the point that the figures in the balance sheet cannot be basis for imposing the duty liability upon the assessee. Mere submission that there are large number of decisions on the point is of no help. Without bringing those decisions to the notice of the Tribunal, it is of no help to contend that there are large number of decisions on the point in issue.

32. It was then sought to be contended that the issue which arises for consideration on merits in the case in hand already stands decided in another matter between the appellants and the respondent and in that regard attention was sought to be drawn to ground No. 'E' in the memo of appeal wherein it has been stated that "Appellant would like to state that the issue is otherwise already decided by another authority in their favour, so this delay should have been condoned in order to render justice to the appellant". The ground is totally vague. The pleadings do not disclose whether the authority who is alleged to have decided the issue is the original authority or the lower appellate authority or the Tribunal. The pleadings do not disclose the identity of the case wherein the alleged issue is alleged to have been decided. In order to appreciate whether the issue involved in the matter has been decided in some other case by some other authority or not, it is necessary to ascertain as to whether the similar issue had

arisen before the another authority and in what facts and circumstances it had arisen, and what has been the decision. In the absence of disclosure of those facts, mere submission that the issue stands covered by another decision cannot be a justification for condoning the delay. In Coronation Spinning India case, the Apex Court had found from the records that the identical issue between the parties was already decided in favour of the appellants therein. Besides the order of the Apex Court was in exercise of powers of Article 142 of the Constitution.

33. For the reasons stated above, we find no error in the order passed by the Commissioner (Appeals) and hence the appeals fail and are hereby dismissed.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

/Pant/