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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/1982/2009-1989/2009 - EX[DB] WITH ES/2047-2054/2009-EX

Date 28/10/2009

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

To :
M/S SHIVA MINT INDUSTRIES,
99-B, BIRPUR INDL. ESTATE, BARIBRAHMANA,
JAMMU.
M/S SHIVA MINT INDUSTRIES, Appellant

Vs

C.C.E. JALLANDHAR(HQ. AT CHANDIGARH) STAY ORDER NO.1044-1051/2009-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No. 831-838/ 2009 EX[DB]** dated 05-10-09 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. JALLANDHAR(HQ. AT CHANDIGARH)
   C.R.BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH.
2. Adv. / Consult
   MR.C.HARISHANKAR
   46, BANK ENCLAVE,DELHI-110092
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 Nos. 1982 to 1989 of 2009

(Arising out of Order-in-Appeal No. 338-345/CE/Appl/Jal(JK)/2009 dated 31.03.2009 passed by the Commissioner (Appeals) Central Excise, Chandigarh).

DATE OF HEARING : 05.10.2009
DATE OF DECISION : 05.10.2009

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT
HON'BLE MR. RAKESH KUMAR, 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?	Yes

M/s Shiva Mint Industries .... **Applicant**
(Rep by Sh. C. Harishankar, Adv.)

VERSUS

CCE, Jalandhar .... **Respondent**
(Rep. by Sh. S. Shah, SDR)

CORAM : **HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT**
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

FINAL **ORAL ORDER NO.** 831-838/09-EX

PER JUSTICE R.M.S. KHANDEPARKAR :

All these appeals are taken up for hearing in terms of the order passed in Stay Application Nos. 2047 to 2054 of 2009.

2. Heard.

3. Since common question of law and facts arises in all these appeals, they were heard together and are being disposed of by this common order.

4. The appellants challenge the order dated 31st March, 2009 passed by the Commissioner (Appeals), Chandigarh, dismissing the appeals filed before him against the order passed by the original authority rejecting the refund claim in relation to the education cess paid by the appellants through PLA in terms of Notification No. 56/2002-CE dated 14th November, 2002. The appeals have been dismissed on the sole ground that they were filed beyond the period of limitation of 30 days without applications for Condonation of Delay and that such applications were sought to be presented only at the time of hearing of the appeals.

5. Seven appeals were filed against the order dated 11th September, 2008, whereas one appeal against the order dated 12th September, 2008 before the Commissioner (Appeals). All those appeals were filed beyond the period of 60 days, but they were filed within the period of 30 days on expiry of the period of 60 days. However, the applications for Condonation of Delay were not filed

along with the appeals, but they were presented when the appeals came up for hearing.

6. In terms of Section 35(1) of the Central Excise Act, 1944, undoubtedly, the appeals are required to be filed within 60 days from the date of communication of order which is sought to be challenge. The proviso to the said Section states that, the Commissioner may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the said period of 60 days, allow it to be presented within a further period of 30 days. Provisions of law, therefore, clearly gives a discretionary power to the Commissioner to condone the delay to the extent of 30 days beyond the period prescribed for filing the appeal. In the case in hand, it is not in dispute that such appeals were filed within the said period of 30 days.

7. The Commissioner, however, on account of failure on the part of the appellants to present a written application for Condonation of Delay along with the appeals, has chosen to refrain himself from exercising his discretionary power to condone the delay. It is not the case of the respondent that the appellants had abstained themselves from seeking leave of the Commissioner to condone the delay. It is also not the case of the respondent that the appellants had filed the appeals beyond the period of sixty days. Undoubtedly, there was a delay of less than 30 days in filing the appeals. Undisputedly, the appellants had actually prayed for condonation thereof when the matter had come up for hearing. In those circumstances, in our considered opinion, refusal of condonation of delay cannot be said to be in a judicious exercise of the discretionary power by the Commissioner

(Appeals). On this ground alone, the impugned order is liable to be set aside and matters to be remanded to the Commissioner (Appeals) while condoning the delay in filing the appeals with further direction to deal with the matter in accordance with law on the basis that the delay in filing the appeals stands condoned. It is made clear that, this is not to mean that the appellants who file the appeal beyond the period of limitation is not required to file the written application for condonation of delay along with the appeal. Undoubtedly, as a matter of rule, every appellant approaching the appellate authority after the expiry of period of limitation has to file the application for condonation of delay along with the appeal. But in a case where the appellants genuinely and under mistaken belief file an appeal beyond a period of limitation and make an attempt to amend his mistake by taking appropriate steps, he should not be penalized for bonafide mistake committed in that regard. In the facts and circumstances, therefore, we find that the impugned order is liable to be set aside and the matters are required to be remanded for the decision in accordance with the provisions of law. Hence the appeals are allowed. The delay in filing the appeals is condoned and the Commissioner (Appeals) is directed to deal with the appeals in accordance with the provisions of law. Appeals accordingly stand disposed of.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Golay