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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/778 /2005-791 /2005 - CU[DB] Date 01/12/2008

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

To : SHRI VINOD SETHI, SOLE PROPRIETOR
M/S ASHOOSONS, WP547, WAZIRPUR VILLAGE
(ASHOK VIHAR) DELHI,

M/S ASHOOSONS Appellant

Vs

THE COMMISSIONER OF CUSTOMS (APPEALS) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/624-637/08-CUS DATED 21.11.08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
THE COMMISSIONER OF CUSTOMS (APPEALS)
NEW CUSTOM HOUSE, IGI NEW DELHI
2. Adv. / Consult
MR.RAJESH RAWAL, ADV., 249, LAWYERS CHAMBERS,
HIGH COURT OF DELHI, NEW DELHI.
3. S.D.R
4. J.C.D.R.
5. Bar association. CESTAT. New Delhi
6. M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7. M/s Centax Publictions (P) Ltd.. 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8. Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9. Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10. Nidheshak publications. I.P.Estate. new Delhi
11. Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagarava Road. T. Nagar.Chennai
13. Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15. Office Copy
16. Guard file

Assistant Registrar

(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-III

Date of hearing/decision:21.11.2008

Customs Appeal Nos.778 to 791 of 2005

Arising out of the order in appeal No.CC(A)205 to 218/ACU/Delhi/1/2005 dated 25th May, 2005 passed by the Commissioner (Appeals), Customs, New Delhi.

For Approval and Signature:

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

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
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

Appellant | Respondent

M/s Ashoosons vs. C.C., New Delhi

Appearance:

Shri Rajesh Rawal, Advocate for the appellant
Shri L.B. Yadav, Authorized Departmental Representative (DR) for the Revenue

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

Final Order No. C/624 to 637/08

Per M. Veeraiyan:

All these appeals by the same appellant arise out of a common order in appeal No. CC(A)205 to 218/ACU/Delhi/1/2005 dated 25th May, 2005.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:

a) The appellant imported dental instruments/goods over a period of time and filed bills of entry on various dates starting from 11.9.2000 to 11.3.2003. In each case, the value declared by the appellant was enhanced by 25% and the appellant paid duty on the enhanced value within a few days from the date of bill of entry and cleared the goods.

b) It is claimed that by a letter dated 22.1.2002 addressed to the Deputy Commissioner of Customs , Air Cargo, they sought for issue of speaking order in respect of 7 bills of entry filed up to 8.11.2001. Again by a letter dated 21.8.2002, a reminder was issued requesting for issue of a speaking order as sought for in their letter dated 22.1.2002.

c) The appellant filed a writ petition before the Hon'ble High Court of Delhi and the same was disposed of by order dated 16.2.2004 directing supply of certified copies of the order within 4 weeks from that date.

d) The Department supplied the certified copies of assessed bills of entry on 5.3.2004.

e) The appellant filed appeals on 16.4.2004 before the Commissioner (Appeals) and claimed that the appellants have filed appeals within the time limit prescribed in the statute.

f) Commissioner (Appeals) however, held that the assessment orders in the bills of entry were themselves appealable orders and that there was delay in filing the appeals which was ranging from 11 months to 3 years 4 months and accordingly, rejected all the appeals.

g) Against the said orders of the Commissioner (Appeals), the appellant is before us.

4. Learned Advocate made the following submissions:

a) They did not agree to the enhancement of the assessable value. They sought for issue of speaking orders from the Deputy Commissioner/Assistant Commissioner and the request has not been acceded to.

b) They filed a writ petition before the Hon'ble High Court praying for issue of direction for issuing speaking orders. On behalf of the Department, it was contended that the filing of the writ petition was a ploy to indirectly overcome the period of limitation and the said contention of the Department has been rejected by the Hon'ble High Court and the

Hon'ble High Court directed for issue of certified copies of speaking orders or non-speaking orders.

c) Learned Advocate submits that no speaking order was issued, as per the order of the Hon'ble High Court, by the Assistant Commissioner/Deputy Commissioner. The appeals have been filed on 16.4.2004 after receipt of the certified copies of the bills of entry within 60 days from 5th March, 2004 ,and ,therefore, all the appeals should be treated as having been filed within time.

5. Learned DR made the following submissions:

a) The only issue before the Hon'ble High Court was the request of the appellant for a direction to supply the certified copies of the orders which were not being supplied. Having noted the issue before them the Hon'ble High Court directed "supply of certified copies of the orders (may be speaking order or non-speaking order made by the Revenue) at the time of assessment of the goods". The Hon'ble High Court also made it clear that they expressed no opinion on the question of limitation and left the matter to be dealt with by the appropriate authority.

b) The assessments made in the bills of entry are very much orders of assessment; they are appealable before the Commissioner (Appeals). Their filing a request in January 2002 requesting for issue of speaking orders in respect of assessments completed in September 2000 onwards are not justified as such a request has been made much after the time limit prescribed for filing appeals before Commissioner (Appeals) was over. He submits that the time limit should be taken from the date of payment of duty as held by the Commissioner (Appeals). As Commissioner (Appeals) has no power to condone the delay beyond 30 days, he seeks upholding of the orders of the Commissioner (Appeals).

6.1 We have carefully considered the submissions from both sides. It would be appropriate to reproduce the order of the Hon'ble High Court of Delhi:

> " *We are not entering into the other disputes raised before the Court as the simple question before us is whether the petitioner is entitled to get certified copies of documents/orders by which the goods were cleared? It is contended by the petitioner that it is on the basis of these*

orders that he can prefer an appeal. It is his case that in case of the bills of entry had been accepted and assessed without making any addition or deduction, the matter would have been different. But the instant case is one where addition to the value of the goods has been made by the assessing officer at the time of assessment. We are not concerned with the merits of the matter. The petitioner, in this writ petition is simply requesting the court to direct the Revenue to supply certified copies of the orders which are not being supplied.

On behalf of the Revenue, it was contended that the petition is not maintainable as indirectly the petitioner would like to see that the period of limitation for filfing the appeal is extended. We do not agree. The petitioner is entitled to the certified copies he is seeking. We are not expressing any opinion on the question of limitation as that issue is not before us. It is for the parties to point out the relevant provision of the law before the appropriate authority examining this issue, if it , at all, arises. Under the circumstances, we direct the Revenue to supply certified copies of the orders (may be speaking order or non-speaking orders) made by the Revenue at the time of assessment of the goods. The copies be supplied within four weeks from today. It goes without saying that the certified copies which would be supplied to the petitioner will be without prejudice to the rights and contentions raised by the parties before us."

6.2 From the above order, the question considered by the Hon'ble High Court was "whether the petitioner is entitled to get certified copies of documents/orders by which the goods were cleared?" It has also been recorded that the issue related to simply a request for direction to supply certified copies of the orders. In this context, the direction was issued to supply certified copies of the orders made by the Revenue " at the time of assessment of the goods". From the above it is clear that the Hon'ble High Court directed only supply of copies and no other prayers ,if any, before the High Court, have been acceded to. Further, the direction was only for supply of copies of the orders "at the time of assessment of the goods". We are in agreement with the submissions made by the learned DR that the assessment in bill of entry is an order of final assessment at the time of assessment of the goods. The direction of the High Court also specifically mentions that copies of the orders to be supplied relate to "speaking orders or non-speaking orders" In other words, it was a direction given to the Revenue authority to supply the copies sought for by the appellant. There is no direction in the said order of the High Court to the Commissioner (Appeals) on the issue of limitation.

7.1 Commissioner (Appeals) has rejected the appeals with the following findings:

> *"5. I have carefully considered the written submissions made by the appellant in the memorandum of Appeal(s), the oral submissions made during the personal hearing(s) and also the application dated 18.5.2005 for condonation of delay. All the appeals have been filed on 16.4.2004. All these fourteen appeals are identical in nature and hence I proceed to decide them by a common order. There is a delay ranging from 11 months to 3 years and 4 months in filing the appeals (even if date of challan viz payment of duty is taken as the relevant date of receipt of the assessed bills of entry. Assessed bills of entry and in itself constitutes an appealable order and there is no requirement of certified copies thereof for filing an appeal. The appellant filed a writ petition in Delhi High Court for supply of certified copies to have the period of limitation for filing the appeal extended. Even the Hon'ble Delhi High Court while directing the Department to supply certified copies of the relevant bills of entry to the appellant held that they are not expressing any opinion on the question of limitation as that issue is not before them; that it is for the parties to point out the relevant provisions of law before the appropriate authority examining this issue. The appellants have not submitted any proof to show that they have indeed requested the lower authority to issue speaking order to them. In any case, all these 14 appeals have been filed on the basis of the assessment order(s) in the respective bills of entry. I find that there is a delay ranging from 11 months to 3 years and 4 months in filing these appeals. There is no requirement in law to file an appeal on the basis of certified copies of the bills of entry. The assessed bills of entry is an appealable order and the date of receipt of assessment order is the relevant date for the purpose of calculation of time period for filing the appeal. The request of the appellant asking for certified copies of bills of entry was only a ploy and a deliberate attempt made to overcome the period of limitation. Further, it is not the case of the appellant that they have paid the duty under protest. In these cases even , if the date of challan viz. payment of duty*

(which is done only after receipt of the assessment order) is taken as the date of receipt of the assessed bills of entry, the delay in filing the appeal ranges from 11 months to 3 years and 4 months. Section 128(1) empowers me to condone delay of upto 30 days only in filing an appeal provided sufficient cause is shown to explain the delay. The delay in filing these appeals brings them squarely in line with the a bar of limitation and I find myself constrained by rigid statutory provisions(s). All the 14 appeals are hit by limitation andare therefore, liable for dismissal.

7.2 We do not agree with the observation of the Commissioner (Appeals) in so far as it related to " request of the appellant asking for certified copies of the bills of entry was only a ploy and deliberate attempt made to overcome the period of limitation". This observation is clearly contrary to the observation by the High Court on the same issue. However, we are in agreement with the other findings of the Commissioner (Appeals) that the order of assessment is an appealable order; that no certified copy was required for filing appeal before the Commissioner (Appeals); that there is a delay of minimum of 11 months to maximum of 3 years 4 months and that Commissioner (Appeals) has no powers to condone such delay, as he has only powers to condone the delay of 30 days in terms of Section 128 (1) of the Customs Act.

8. In view of the above, we do not find any ground to interfere with the orders of the Commissioner (Appeals).

9. The appeals are, therefore, rejected.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/