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

Appeal No. E/3224/2007-SM[BR] WITH E/STAY/ 2872/ 2007-SM[BR] Date 08/02/2008

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

To :
M/S ISHAR ALLOYS (P) LTD.
MACHHIWARA ROAD, MANGARH KOHARA,
LUDHIANA

M/S ISHAR ALLOYS (P) LTD. Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of Final order No. 286/2008-SM[BR]&S/86/2008-SM dated 4.2.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

   C.C.E. CHANDIGARH

   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
   CHANDIGARH 160017
2. Adv. / Consult

   MR.SIDHARTHA SEN, ADVOCATE

   C-5/9, SAFDARJUNG DEVLOPMENT AREA,OPP IIT GATE, N. DELHI.

3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

Excise Appeal No.3224 of 2007(SM) with Excise Stay No.2872/07

[Arising out of Order-in-Appeal No.271-CE/APPL/Ldh/07 dt.14.9.07 passed by the Commissioner(Appeals), Chandigarh)

For approval and signature:

Hon'ble Mr. A.K.SRIVASTAVA, 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 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?	:	Yes
4.	Whether order is to be circulated to the Department Authorities:	:	

M/s. Ishar Alloys (P) Ltd. Appellant

Versus

CCE, Chandigarh Respondent

Appearance

Shri Rupinder Kumar, Adv. For Appellant

Sh. Sumit Kumar, Authorised Representative(DR)For Respondent

Coram: Hon'ble Mr. A.K.SRIVASTAVA, MEMBER (TECHNICAL)

Date of decision: 4.2.08
Final Order No. 286/2008 SM BR
Stay - 86/2008 -SMBR

Per A.K.Srivastava:

Heard both the sides and perused the records.

2. The short point involved in the instant appeal is whether the appeal filed before the Commissioner(Appeals) against the Order-in-Original dt.30.3.2000 is time barred or not. The appellants have filed the appeal before the Commissioner(Appeals) on 27.2.06.

3.(i) The appellants have contended that they had closed their mill and got its registration with the Central Excise Department cancelled on 27.8.97, and the possession of the premises was given to M/s. Mittal Alloy for carrying on their business in pursuance of mortgage deed executed on 19.8.97. The premises were in the possession of M/s. Mittal Alloy from 1997 to 30.9.05 and they were carrying on their business activities in their own name and style since 1997. The appellant again got registered with the department only on 30.9.05. They contended that the mortgage deed is a substantial evidence to establish that they were not in possession of the premise from 19.8.1997 to 30.9.05. They stated that the letters dt.27.8.97 and 30.9.05, which were submitted with the Central Excise Department, regarding cancellation and application for registration by them support their claim that they had stopped their manufacturing activities during the period of alleged delivery of the Order-in-Original.

ii). They further maintained that if at all the Range office delivered the order-in-original at the premises of M/s. Mittal Alloys, it was not delivered to them. They had neither knowledge about the order-in-original nor they received any information from M/s. Mittal Alloys about the said order iii). They ~~appellant~~ also received the Order-in-Original on 30.12.05. Therefore, the question of filing the appeal prior to that does not arise. They had also submitted, with the revenue, a duly sworn Affidavit in this regard stating that the order-in-original was received by them on 30.12.05. Hence, the appeal filed by them is in time.

4. I have examined the position. I find that the appellants had applied for the cancellation of the registration on 27.8.97. Their registration was not cancelled by the Department on 27.8.97 as contended by them. They have not submitted any evidence to show as to when their registration was cancelled by the Department. They have also not given any alternate address to the Department for future correspondence with them.

5. On the other hand, the Department has confirmed the delivery of the order dt.30.3.2000 to the appellants on 01.11.2000 duly acknowledged by them through the Range Office. I have perused the order dt.1.3.2000. I find that the receipt of the order on 1.11.2000 is clearly indicated on the copy of the order dt.30.3.2000. This was again confirmed by the Range Office vide their letter dt.28.12.05 while forwarding the copy of the order dt.30.3.2000 to the appellants, who had requested to supply the copy of the said order.

6. Thus the record shows that the order dt.1.3.2000 was served on the appellants on 1.11.2000 and acknowledgement was obtained on the copy of the order itself. There is a delay of more than five years in filing the appeal after the expiry of the limitation period. As per the proviso to Section 35(1)

of the Central Excise Act,1944, the delay in filing appeal upto 30 days beyond a period of 60 days can be condoned provided sufficient cause is shown to the Commissioner(Appeals). The appeal filed before the Commissioner(Appeals) is patently and hopelessly time-barred. The impugned order of the Commissioner(Appeals) dismissing the appeal as time-barred is correct and is upheld. The appeal filed by the appellants is rejected.

(Operative part of the order pronounced in the open Court).

(A.K.Srivastava)
Member Technical

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