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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. C/438 /2008 - SM[BR]   Date 17/09/2008

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

To :
M/S S & S INTERNATIONAL
O 40,WEST PATEL NAGAR,NEW DELHI

M/S S & S INTERNATIONAL   Appellant
Vs
C.C. (PREVENTIVE) AMRITSAR   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1326 / 2008 **SM[BR]** dated 28.8.2008

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C. (PREVENTIVE) AMRITSAR
   CUSTOM HOUSE, CENTRAL REVENUE BUILDING, THE MALL, AMRITSAR 143001.
2. Adv. / Consult
   MR.SAURABH KAPOOR, ADVOCATE
   11-YADVINDRA COLONY, THE MALL, PATIALA 147001
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 Delhi -
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), Thyagaraya Road, T. Nagar,Chennai 60017
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
(SM Appeal Branch)

N THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Customs Appeal No.438 of 2008 –SM (BR)

[Arising out of Order-in-Appeal No.124/CUS/APPL/LDH/2007 dated 4.10.2007 passed by the Commissioner of Customs (Appeals), Chandigarh]

Date of Hearing/ Decision:28.08.2008

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporters may be allowed to see 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? : No.
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? : Yes

M/s. S & S International ....Appellants
[Rep. by Shri S. Kapoor, Advocate]

Vs.

CC (Preventive), Amritsar ...Respondent
[Rep. by Shri B.S. Suhag, DR]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No. 326/08-SM(BR)/Dated:28.08.2008

Per P.K. Das:

After hearing both the sides and on perusal of the records, it is seen that the Commissioner (Appeals) rejected the appeal on the ground that the appeal was filed beyond 90 days.

2. Ld. Advocate submits that on 28.12.2006, the Appellant received the Adjudication Order dated 14.12.2006 and filed the appeal on 26.03.2007. Thus there is a delay of 28 days, which is within the power of the Commissioner (Appeals) to condone the delay. The Commissioner (Appeals) proceeded on the basis of the report of the Superintendent of Central Excise stating that the Order dated 14.12.2006 was dispatched on 15.12.2006 and the Appellant failed to produce any evidence that the Order was received by them on 28.12.2006. The Larger Bench of the Tribunal in the case of Margra Industries Ltd. Vs. CC, New Delhi – 2006 (202) E.L.T. 244 (Tribunal-LB) held that despatch of adjudication order by speed post/registered post would not amount to a valid service in the absence of proof of actual delivery of speed post. In the present case, the Revenue only produced dispatch of adjudication order by registered post. There is no proof of actual delivery of registered post.

3. In view of that I hold that the Appellant received the order on 28.12.2006. However, there is a delay of 28 days, which was not considered by the Commissioner (Appeals).Accordingly, the impugned order is set aside and the matter is remanded back to the Commissioner (Appeals) to decide the delay in filing appeal of 28 days. The appeal is allowed by way of remand.

Order dictated & pronounced in open court on 28.8.2008.

(P.K. Das)
Member (Judicial)

Ckp.