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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/712 /2008, E/COD/ 58 /2008 , E /STAY/ 707 /2008 –SM[BR] Date 10/06/2008

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

To :
M/S EGGRO PAPER MOULDS LTD.
D-5, SECTOR-14,
JAGDISHPUR,
DISTT. SULTANPUR (U.P.)

M/S EGGRO PAPER MOULDS LTD. Appellant
Vs
C.C.E. LUCKNOW Respondent

n directed to transmit herewith a certified copy of **Final order No.** 904 /2008-SM[BR]&M/173/08& S/ 373 /2008dated 25.4.2008

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. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.
2. Adv. / Consult
MR.JAMSHED BEY,ADV
221, SUPREME COURT LAWYERS CHAMBER, TILAK LENE, 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. 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. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/COD/58/08, E/S 707/08, E/Appeal No. 712/08-SM

(Arising out of order in appeal No.139/CE/LKO/07 dated 29.10.07 passed by the Commissioner of Central Excise (Appeals), Lucknow)

For approval and signature:

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

1. Whether Press reporters may be allowed to see the order for publication as per Rule 27 of the 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 ?
3. Whether Their Lordships wish to see the fair copy of the Order ?
4. Whether Order is to be circulated to the Departmental authorities?

N.

M/s Eggro Fibres — Appellant (Rep. by Shri R.P. Tiwari, Rep.)

Vs

CCE, Lucknow — Respondent (Rep. by Shri A.K. Rastogi, DR)

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

Date of Hearing: 25.4.08

Misc order No. 173/08-SM(BR)

Final Order No. 904 /2008-SM(BR)

Stay order No. 373/08-SM(BR)

Per P.K. Das:

The Applicant filed this Application for condonation of delay of filing appeal of 31 days. It appears from the record that the impugned order was issued on 29.10.07. It is contended by the Applicant that the Applicant company is closed down and the order was found lying near the gate of the closed factory, which was picked up by the watchman and handed over to the applicant staff on 15.12.07. After considering the facts and circumstances of the case, I find that there is sufficient reason for condonation of delay in filing the appeal. Accordingly, COD application is allowed.

2. After hearing the learned Representative of the applicant and the learned DR, I find that the issue involved in this case is in narrow compass and therefore, after granting stay, the appeal itself is taken up for disposal.

4. The Commissioner (Appeals) rejected the appeal on the ground that filing of Appeal is barred by limitation. It is seen that the Adjudication Order was received by the appellant on 16.11.06 and the appeal was filed before the Commissioner (appeals) on 25th June, 2007. The Commissioner (Appeals) rejected the appeal under Section 35-B of the Central Excise Act, 1944. The appeal is required to be filed within 60 days from the date of communication and on sufficient reason shown, the said period can be extended for a further period of 30 days. In this case, the Appellant filed the Appeal beyond 30 days.

5. The learned DR submits that the Hon'ble Delhi High Court in the case of M.R. Tobacco Pvt Ltd Vs Union of India reported in 2004 (178) ELT 137 (Delhi) held that the Commissioner (Appeals) has no power to condone the delay beyond the stipulated period under Section 35-B of the Act. The learned DR further submits that the decision of the Hon'ble Delhi High

Court was upheld by the Hon'ble Supreme Court as reported in 2007 (213) ELT A-115 (SC)

6. In view of the decision of the Hon'ble Supreme Court, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the appellant is rejected. The stay application is also disposed of.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*