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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/1525/2008 – SM[BR] E/ STAY/ 1485 / 2008 Date 03/12/2008

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

To :
M/S ALAKNANDA INDUSTRIES,
F-152, UDYOG VIHAR,RIICO INDUSTRIAL
AREA,SRIGANGANAGER,RAJASTHAN.

M/S ALAKNANDA INDUSTRIES, Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1569/2008- SM[BR]&S/646/2008 dated 15.10.2008 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. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
MR.SURESH AGGARWAL
1324, SECTOR-28, FARIDABAD
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). Thyagaraya 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-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

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

Excise Stay Application No.1485 of 2008-SM
And Appeal No.1525 of 2008-SM (BR)

[Arising out of Order-in-Appeal No.98(RKS)CE/JPR-I/2008 dated 25.4.2008 passed by the Commissioner of Central Excise (Appeals), Jaipur]

Date of Hearing/ Decision:15.10.2008

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. Alaknanda Industries ...Appellants

[Rep. by Shri Vivek Agarwal, Advocate]

Vs.

CCE, Jaipur-I ...Respondent

[Rep. by Shri R.K. Saini, DR]

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

Final Order No. 1569/08 SM (BR) & /Dated:15.10.2008
Stay Order No. 646/2008 SM(BR)

Per P.K. Das:

After hearing both the sides, I find that the issue involved in this case is in narrow compass and, therefore, the appeal along with stay application is taken for disposal.

2. The Commissioner (Appeals) rejected the appeal as time barred. The dispute relates, according to the appellants, that the Adjudication Order dated 31.01.2006 was received by them on 28.06.2006. According to the Revenue, the Adjudication Order was served on 1.2.2006. Vide Final Order dated 7.6.2007, the Tribunal remanded this matter to the Commissioner (Appeals) to reconsider the issue on date of actual service by making proper queries. In the impugned order, the Commissioner (Appeals) observed that the order was received and signed on behalf of the appellants by one Shri Lokesh. In the present appeal, the appellants had taken a stand, " that no person namely Lokesh is working in the unit since last 5 years". By Interim Order dated 20.08.2008 of the Tribunal, the appellants were directed to satisfy by producing record that no person namely Lokesh was in the employment during last five years or even earlier as claimed by the appellant.

3. Today, the ld. Advocate drew the attention of the Bench to the certificate of Chartered Account to prove that no person in the name of Lokesh was employed in their factory. He also placed the Partnership dated 1.4.2002. It is his contention that the partnership firm was formed in April, 2002 and thereafter, no one in the name of Shri Lokesh was employed in their factory. At this stage, on a query of the Bench, ld. Advocate is unable to produce the evidence that the order was received on 28.06.2006.

4. He submits that the date of receipt of the order could be available from the copy of the appeal filed before the Commissioner (Appeals), which is not available with him.

5. I find that the Tribunal in its Interim Order dated 20.08.2008, observed that the condonation of delay is discretionary but the discretion has to be exercised judiciously. It is also observed that such discretion would be exercised rather liberally but if the plea is false, it may be a different matter. In my view, the matter is required to be verified by the Commissioner (Appeals) about the receipt of the Adjudication Order and

the evidences placed by them before the Tribunal. In view of that, I set aside the order of the Commissioner (Appeals) and remand the matter to the Commissioner (Appeals) to verify the documents placed by the appellants and to decide afresh in the light of the observation of the Tribunal in Interim Order dated 20.08.2008 and present order. The appeal is allowed by way of remand. The stay petition is also disposed of.

Order dictated & pronounced in open court on 15.10.2008.

(P.K. Das)
Member (Judicial)

Ckp.