TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. E/2715/2008 - EX[DB] & E/S/2736/08-EX Date 25/02/2009

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

To :
M/S HIMGIRI ISPAT PVT. LTD.
E-27,28,39 & 40, INDUSTRIAL AREA,
JASHODHARPUR, KOTDWAR, DISTT. PAURI
GARHWAL (UTTARAKHAND)

M/S HIMGIRI ISPAT PVT. LTD. Appellant
Vs
C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No**.167/09& S.O.NO.197/09- **EX[DB]** dated 05-2-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. MEERUT I
   EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult
   MR.P.R.MULLICK
   27-RACE COURSE,DEHRADUN.
3. C.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-15
15. Office Copy
16. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-III

Date of hearing/decision: 5.2.2009

Stay Application No.2730 of 2008 and Central Excise No.2715 of 2008

Arising out of the order in appeal No.158-CE/MRT-I/2008 dated 26.8.08 passed by the Commissioner (Appeals I), Customs & Central Excise, Meerut I.

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?	M.
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

Appellants | Respondent

M/s Himgiri Ispat P. Ltd. vs. C.C.E., Meerut I

Appearance:

Shri P.R. Mullick, Advocate for the appellant/applicant
Shri Virender Singh Choudhary, Authorized Departmental Representative (DR) for the Revenue

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

STAY Order No. 197/09-EX
FINAL ORDER NO 167/09-EX

Per P.K. Das:

As the issue involved in this case is in narrow campus , therefore, after granting stay, the appeal is taken up for hearing.

2. After hearing both sides and on perusal of the record, we find that the Commissioner (Appeals) rejected the appeal on the ground of limitation. It

appears from the impugned order that there was delay of 919 days to file the appeal before the Commissioner (Appeals).

3. Learned Advocate submits that the appellant moved Writ Application under Article 226 of the Constitution of India before the Hon'ble High Court of Uttarakhand whereby an interim stay was granted vide Order dated 13.5.05 as extended from time to time. He further submits that vide Order dated 18.12.2006 the Hon'ble High Court dismissed the Writ Application with the direction that the appellant has a remedy under Section 35 of the Central Excise Act, 1944 and they may avail the remedy thereunder. He, further submits that due to communication gap between the learned Counsel and the appellant, there was a delay in filing appeal and ultimately, the appeal was filed on 16.10.07. He also submits that Commissioner (Appeals) dismissed the appeal following the decision of the Hon'ble Supreme Court in the case of Singh Enterprises vs. C.C.E., Jamshedpur - 2008 (221) ELT 163 (SC), but he has overlooked the paragraph 10 of the said decision. He also submits that on identical situation, the Hon'ble Uttarakhand High Court vide order dated 4.9.06 in the case of M/s Uttaranchal Iron & Ispat Ltd. vs. The Deputy Commissioner, Customs & Central Excise, and in their Writ Petition Misc. Bench No.488 of 2005 dated 22.6.06 held as under:

> " ***Since the alternative remedy is available to the petitioner under the statute before Respondent No.1 – Dy. Commissioner,Customs & Central Excise, Dehradun, therefore, we relegate the petitioner to appear before Respondent No.1. However, it is provided that opportunity of hearing shall be given to the petitioner.***
>
> ***The petition is dismissed accordingly."***

He also submits that the Hon'ble High Court passed the above order in respect of other party. It is the contention of the learned Advocate that the Commissioner (Appeals) should have condoned the delay taking into account the Hon'ble High Court's order on the identical situation and consider the paragraph 10 of the Supreme Court decision in the Singh Enterprises (supra).

4. Learned DR drew attention of the Bench to paragraph 8 of the Hon'ble Supreme Court decision in the case of Singh Enterprises (supra).

5. After hearing both sides and on perusal of the record, we find that the Hon'ble High Court in other case on the identical situation directed the appellant to appear before the Deputy Commissioner, Customs & Central Excise. In the present order of the Hon'ble High Court , it does not indicate such direction. In view of that, we do not find any force in the submission of the learned Advocate. We notice that the Hon'ble Supreme Court in the case of Singh Enterprises (supra) held as under:

> ***"8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."***

5. In view of the above discussion, we do not find any infirmity in the order of the Commissioner (Appeals). Accordingly, the appeal filed by the appellant is rejected. Stay petition is also disposed of.

(Dictated and pronounced in open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/