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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/727 /2007 – SM[BR]E/MISC/924/2008, E/ROA/194/2008E/COD/45/07, E/STAY/642 / 2007 –SM[BR] Date 27/04/2009

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

To :
M/S U.S. FOODS PVT LTD
PLOT NO 8 & 9, NATIONAL HIGHWAY, GAJRAULA
(U.P.)

M/S U.S. FOODS PVT LTD Appellant

Vs

C.C.E MEERUT-II Respondent

ım directed to transmit herewith a certified copy of **Final order No**. 336 / 2009 –SM[BR]&M/69-71/2009 &S/155/2009dated 27.3

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 MEERUT-II
MANGAL PANDEY NAGAR, MEERUT (U.P.)

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI -70.

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Misc. No. 924 of 2008-SM in Excise Appeal No. 727/07
ROA 194/08, E/S 642/07 COD 457/07

(Arising out order-in-Appeal No. 157-CE/MRT-II/2006 dated 13.9.06 passed by the Commissioner (Appeals), Central Excise, Meerut)

M/s U.S. Foods Pvt. Ltd. — Appellant

Vs.

CCE, Meerut-II — Respondent

Appeared for Appellant : Shri Bipin Garg, Advocate

Appeared for Respondent : Shri S.K. Bhaskar, DR

Date of Hearing: 20.3.2009

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Misc order No. 69-71/09-SM(BR)
Final Order No. 336/09-SM(BR) dated 27.3.09
Stay order No. 155/09-SM(BR)

Per D.N. Panda :

Ld. Counsel Shri Bipin Garg submits that this case deserved sympathetic consideration without throwing at the threshold. He narrated that appeal was filed by the appellant on 7th Feb. 2007. Notice of stay hearing and also hearing for condonation of delay was fixed on 28th June 2007. Of course appeal was filed belatedly by 49 days. So far as the condonation of delay is concerned, he submits that due to communication gap for the closure of the factory, the appellant was prevented to file the appeal belatedly and that was beyond control of the Appellant. Also delay is not attributable to any malafide nor in-action.

2. Ld. Counsel further submits that delay may be condoned and the appeal which has already been dismissed on 28.6.07 may be restored. He further submitted that against the dismissal order passed on 28.6.07, the appellant made an application for restoration and that restoration application was also dismissed on 23.10.08. He submitted further that so far as the first hearing on 28th June 2007 is concerned, the ld. counsel who was engaged for appearance met with an accident for which he filed an adjournment application. That application probably did not receive attention of the Bench. Therefore dismissal order dated 28th June 2007 is an outcome thereof.

3. So far as the dismissal of application for restoration of appeal is concerned, ld. Counsel says that the matter was listed on 23.10.08 but no notice was served on the appellant. That has prevented the appellant to cause appearance and argue its case. Therefore he prays that delay may be condoned and the appeal may be restored as well as stay application may be heard today.

4. So far as the stay application is concerned, record reveals that the appellant was provided an opportunity for redressal even before the ld. Commissioner (Appeal). The appellant having failed

to comply with the stay order passed by that authority, its appeal was dismissed by order dated 13.9.06. Ld. Counsel submits that the appellant shall comply to the order of the Tribunal and shall seek necessary remedy before such forum, as the Tribunal may direct .

5. Ld. DR vehemently objects the application for restoration, application for condonation of delay as well as the stay application.

6. Heard both the sides and perused the record. The case appears to be a sympathetic one when para-2 of the Misc. application shows the fact of accident of learned Counsel engaged in the matter, met accident, when he was on the way to appear for hearing. However the appellant has not come out with an affidavit to prove the truth of para-2. When the restoration application dated 1st Aug. 08 is looked into, the appellant has also stated the same reason for restoration. Considering that the appellant may be deprived of justice if its applications are thrown at the threshold, delay is condoned and appeal is admitted. So also restoration application is allowed, following the ratio laid down by apex Court in the case of **J.K. Synthetics Ltd. Vs. CCE** reported in 1996 (86) ELT 472 (SC) read with Rule 41 of CEGAT Procedure Rules 1982 exercisable in this case to remove the hardship that the appellant has faced. In the result, both the misc. applications in respect of condonation of delay and restoration of appeal is allowed.

7. So far as the stay application is concerned, in order to provide an opportunity of hearing to the appellant, it is directed that the appellant should make pre-deposit of Rs,1,00,000/- (Rupees One lakh) within four weeks from today and submit a copy of the challan before the ld. Commissioner (Appeals) and compliance reported on 20th April 2009 to that Authority. Carrying out above direction, the Appellant shall make an application to ld. Commissioner for fixation of date of hearing. If this process is followed, Ld. Commissioner (Appeals) shall hear the appellant on the merits of the case and pass a reasoned and speaking order following due process of justice.

8. With the aforesaid direction, both the stay application as well as the appeal of the appellant stands disposed.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

RM