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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/676 AND696 / 2009 -SM[BR]INE/STAY/678AND690/2009-SM[BR] Date 16/06/2009

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

To :
(12) M/S SRF LIMITED

RAMNAGAR ROAD, KASHIPUR ,DISTT- UDHAM
SINGH NAGAR, UTTARAKHAND
M/S SRF LIMITED Appellant

Vs
C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No 566-567 /2009-SM[BR]&S/306-307/2009** Dated 3.6.2009

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

OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)

2. Adv. / Consult
SHRI NIKHIL AGGARWAL ADV.
M/S APPELANT;----------------

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
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
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Assistant Registrar
(SM Appeal Branch)

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

Excise Stay Application No.678 of 2009 & Excise Stay Application No.690 of 2009-SM (BR) in Appeals Nos.E/676 and 696 of 2009-SM

[Arising out of Order-in-Appeal No.146/CE/MRT-II/2008 dated 27.11.2008 in Appeal No.E/676 of 2009-SM (BR) and Order-in-Appeal No.145/CE/MRT-II/2008 dated 27.11.2008 in Appeal No.E/696 of 2009-SM (BR) passed by the Commissioner of Central Excise (Appeals), Meerut-II]

Date of Hearing/ Decision:3.6.2009

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.		No
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?	:	Yes

M/s. SRF Limited ...Appellant

(Rep. by Shri Nikhil Aggarwal, Advocate)

Vs.

CCE, Meerut-II ...Respondent

(Rep. by Shri R.K. Saini, DR)

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

Final Order No. 566-567/09-SM(BR) /Dated:03.06.2009

Stay order No. 306-307/09-SM(BR)

Per P.K. Das:

Common issue is involved in these appeals and therefore, both are being taken up together for disposal.

2. Heard both sides and perused the records. As the issue involved is in narrow compass and after granting stay, the appeals are taken up for hearing.

3. The appellants filed appeals before the Commissioner (Appeals) under Section 85 of the Finance Act, 1994 under the Form ST within 90 days as stipulated in the said Section. The Commissioner (Appeals) observed that the appeals relate to the excise matter and the appeal should be filed within 60 days from the date of communication of the impugned order under Section 35 B of the Central Excise Act, 1944 and appeals were filed beyond 60 days. There was delay in filing appeal of 19 days under the Central Excise Law. But there was no delay under Section 85 of the Finance Act, 1994. The Commissioner (Appeals) rejected the appeal as time barred under Section 35 B of the Act, 1944.

4. After hearing both the sides, I find that the appellants filed the appeals under Form ST-4 as prescribed under the Finance Act, 1994. It is seen that the appellants filed the appeals under impression that the matter relates to the Service Tax under Finance Act, 1994. Thus, there is no negligence and/or inaction on the part of the appellants. Therefore, the delay in filing the appeals before the Commissioner (Appeals) is liable to be condoned. Accordingly, the delay in filing the appeals before the Commissioner (Appeals) is condoned. As the matter was decided by the Commissioner (Appeals) without going into the merits of the case, I find that it is fit and proper to remand the matter to the Commissioner

(Appeals) to decide merit. Accordingly, the impugned orders are set aside. Both the matters are remanded to the Commissioner (Appeals) to decide on merit. Both the appeals are allowed by way of remand. The stay applications are disposed of.

Order dictated & pronounced in open court on 3.6.2009.

(P.K. Das)
Member (Judicial)

Ckp.