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
SINGLE MEMBER APPEAL BRANCH

Appeal No. C/34 /2009 – SM[BR] C/COD/17/2009 C/ STAY/179 / 2009 –SM[BR] Date 24/06/2009

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

To :
VISHNU KUMAR AGGARWAL
S/O LATE SH. RAM AGGARWAL, 291, SHAHU KARA, BAREILLY.

VISHNU KUMAR AGGARWAL Appellant
Vs
C.C.E. KANPUR Respondent

n directed to transmit herewith a certified copy of **Final order No 625 /2009 –SM[BR]&M/128/09&S/335/2009** dated 1.6.2009 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E. KANPUR
   117/7, SARVODAYA NAGAR, KANPUR 208005.
2. Adv. / Consult SHRI AMIT KUMAR ADV.
   B-45/47, SHIV BUILDING CONNAUGHT PLACE
   NEW DELHI -110001.
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)
16. Office Copy
17. Guard file

Assistant Registrar
(SM Appeal Branch)

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

Customs COD Application No.17 of 2009-SM (BR)
Customs Stay Application No.179 of 2009-SM (BR)
in Customs Appeal No.34 of 2009- SM (BR)

[Arising out of Order-in-Original No.8/Comm./Adj./Seiz./99 dated 31.03.1999 passed by the Commissioner of Central Excise, Kanpur]

Date of Hearing/ Decision:1.6.2009

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?	:	No

Mr. Vishnu Kumar Aggarwal ...Appellants
(Rep. by Shri Amit Kumar, Advocate)

Vs.

CC, Kanpur ....Respondent
(Rep. by Shri R.K. Saini, DR)

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

Misc order No. 128/09-SM (BR)
Final Order No. 625/09-SM(BR)/Dated:01.06.2009
Stay order No. 335/09-SM(BR)

Per P.K. Das:

The applicant filed this application for condonation of delay in filing appeal of 3,486 days.

2. The relevant facts of the case, in brief, are that on 25.08.97, a Break Van No.SR 9837A of 2616 UP.G.T. Express Train while travelling from New Delhi to Chennai met with a fire accident near Agra Cantt. Station and various goods were damaged. The Customs Officers visited the Railway Station and examined the Railway Parcel Godown on 6.1.98 and found a consignment of silver bullion with foreign marking weighing 257.300 Kgs. valued Rs.20,06,940/- and other miscellaneous goods of foreign origin like cameras, watches, bushes of industrial purposes, etc.(in burnt and damaged condition). The Customs Officers seized silver bullions of foreign origin. M/s. Andhra Angadia Services, Delhi by letter dated 19.01.98 stated that they have booked some silver box of approximately 250 Kgs. from New Delhi in G.T. Express on behalf of their clients on 25.08.97. It is also stated that they have communicated the matter to the owners of the goods in question to contact the Customs Authorities and to submit their claim directly. It is seen from the impugned order that one M/s. Akula Seshagiri Rao & Sons, Gold and Silver Jewellers claimed silver weighing 14.944 Kgs. and no claim was made against the balance quantity of 242.243 Kgs. By the impugned order, the Commissioner of Central Excise & Customs, Kanpur-I confiscated the seized goods absolutely and imposed penalty of Rs.2 Lakhs on M/s. Akula Seshagiri Rao & Sons and Rs.1 Lakh on M/s. Andhra Angadia Services. The applicant filed this appeal on 22.1.2009 against the Order dated 31.03.99 issued on 6.4.99.

3. Ld. Advocate on behalf of the appellant submits that the applicant is the owner of 29.905 Kgs. of silver, which was confiscated by the impugned order without issue of any show cause notice. He submits that the applicant was pursuing to the Courier Company for release of the goods and no communication was made by them. He also submits that when it came to their knowledge that the customs officers proposed to auction the seized goods, they filed objection dated 23.05.2008 before the Commissioner. Hence, the applicant moved the writ application before the Hon'ble High Court of Judicature at Allahabad vide Civil Misc. Writ Petition No.1396 of 2008. By Order dated 17.07.08, the Hon'ble High Court directed the Commissioner to pass an appropriate order against the objection in accordance with law within a period of one month. In pursuance of the Order of the Hon'ble High Court, the Commissioner by letter dated 28.08.08 informed the applicant that the goods were already confiscated vide Adjudication Order No.8/COMM/ADJ/C/99/CU dated 31.3.99 by the Commissioner of Customs, Kanpur. Ld. Advocate submits that the applicant thereafter moved another writ application before the Hon'ble High Court being Civil Writ Petition No.1709 of 2008. By Order dated 22.09.2008, the Hon'ble High Court dismissed the writ application with [illegible] ~~interim~~ direction. It was directed by the Hon'ble Court that the applicant may apply for issuance of certified copy of the Adjudication order before the Authority concerned and avail the appropriate remedy under the Central Excise Act, 1944. In terms of the

Order of the Hon'ble High court, the Superintendent of Customs by letter dated 24.10.2008 served a copy of the Adjudication Order dated 31.03.99, which was received by the applicant on 26.10.08. The appeal was filed on 20.01.09. The main contention of the ld. Advocate is that the impugned Adjudication Order was not served to the applicant. It was served in pursuance of the Order of the Hon'ble High Court and they filed appeal within the stipulated period. Therefore, there is no delay in filing appeal.

4. Ld. DR on behalf of the Revenue submits that the goods were seized on 6.1.98. The Courier Company claimed the goods. It was stated by them that they have communicated the owner of the goods and one M/s. Akula Seshagiri claimed the goods partly. He submits that the applicant had not filed any claim before the Customs Authorities. He further submits that after 10 years of seizure of the goods, the applicant moved the writ application before the Hon'ble High Court. He also submits that they have failed to explain the delay and latches for 10 years.

5. After hearing both the sides and on perusal of the records, it is seen from the impugned order that the Customs Authorities seized the goods on 6.1.98. M/s. Andhra Angadia Services booked the consignments. In order to appreciate the facts of the case, the relevant portion of the impugned order is reproduced below:-

> " During the course of investigation one Shri A.K. Chauhan, Advocate filed his authorisation/Vakalatnama

> of M/s. Andhra Angadia Service, 264, Kutcha Sashi Ram, Chandani Chowk, Fatehpuri, Delhi. Shri Chauhan also submitted a letter dated 19.01.98 in which he stated that his client M/s. Andhra Angadia Service had booked some silver bars of approx. 250 Kgs. from New Delhi in G.T. Express on behalf of their matter to the owners of the goods in question to contact the Customs authorities and submit their claim directly. But nobody came forward to claim the seized goods nor M/s. Andhra Angadia Service submitted any documents/list of their clients in this respect."

It is seen that the applicant moved the writ petition before the Hon'ble High Court in the year 2008 when the auction proceedings was initiated against the goods in question. Ld. Advocate submits that they have perused the Courier Company during the passage of time of 10 years. He submits that it is statutory duty of Customs Officers to give opportunity to the owner of the goods before confiscation.

6. I am unable to accept the submission of the ld. Advocate. In the instant case, it is revealed that the Courier Company communicated the owners of the goods and one of the owners also claimed the goods before the Customs Authorities. It appears that the applicant had not claimed the goods within about 10 years from the date of seizure. The applicant failed to explain reasons for the delay and latches on their part about 10 years. Therefore, the COD application filed by the applicant is without any substance. This order is passed without going into the question as to

whether the appeal is maintainable as the applicant was not party of Adjudication Order.

7. Hence, I do not find any merit in this application. Accordingly, the COD Application is rejected. The stay application and appeal are also dismissed.

Order dictated & pronounced in open court on 1.6.2009.

(P.K. Das)
Member (Judicial)

Ckp.