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

Appeal No. C/196 /2009 - CU[DB] Date 08/07/2009
C/COD/49/09,C/S/709/09

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

To :
M/S JEWEL INTRERNATIONAL,

THROUGH ITS PROPRIETOR SHRI SANDEEP
CHAUDHARY, A-9, 3RD FLOOR, GUJARANWALA
TOWN-I, NEW DELHI-110019.

M/S JEWEL INTRERNATIONAL, Appellant

Vs

C.C.(JODHPUR) Respondent

I am directed to transmit herewith a certified copy of Final order No. C/246 2009 CU[DB] dated 30.06.09 passed by the Tribunal under Section 129. (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Alonwith Stay Order No C/133/09 & Misc Order No C/74/09

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent

C.C.(JODHPUR)

HQ AT NEW CENTRAL REVENUE BUILDING, STATUE CIRCLE, 'C' SCHEME, JAIPUR 302005.

2. Adv. / Consult

MR.SUDHIR MALHOTRA, ADV

13-R HUKAM CHAND COLONY JALANDHAR (PB)

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
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

C/COD/49/09 & C/S/709/09 in C/136/09

(Arising out of Order-in-Original No.13/2008 dt.2.9.08 passed by the Commissioner(Appeals), Jodhpur)

M/s. Jewel International — Appellant

Versus

CCE, Jodhpur — Respondent

Appearance
Sh. Sudhir Malhotra, Adv. For Appellant
Sh. Sunil Kumar, Authorised Departmental Representative(DR)
For Respondent

Coram: Hon'ble Mr. D.N.PANDA, JUDICIAL MEMBER
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Final Date of decision: 30.6.09
Order No. C/246/09
Stay Order No. C/133/09
Per D.N.Panda: Misc Order No C/74/09

Ld. Counsel Shri Sudhir Malhotra submits that for the communication gap between the appellant and the authorities, the appellant was prevented to appear before the ld. adjudicating authority for which the impugned order was passed ex-parte.

The appellant has merit in the case if circular No.67/97-Cus dt.8.12.97 is considered.

2. Shri Sudhir Malhotra further submits that for getting justice, this appellant is before this forum and prays for condonation of the delay in filing the appeal by 83 days for the reasons beyond control of the Appellant. There was no malafide intention to cause delay in seeking appeal. Further, the appellant shall not stand to benefit if the appeal is dismissed on the ground of delay in filing. Therefore, the appellant may be granted an opportunity to get justice from the authority below, condoning the delay in filing the appeal before the Tribunal and disposing the appeal itself remanding the matter.

3. Shri Sunil Kumar, Ld. DR has obtained a report from the authorities below in accordance with the direction of the Tribunal made on 9.6.09. The report clearly suggest that the appellant has created confusion to the Department as to the change of address. Ld. Jt. Commissioner has categorically brought out that the appellant had received all communications from the department both at his new and old address. Therefore, prayer of revenue is

to dismiss the appeal of the Appellant for the evasive practice followed by the appellant to delay the matter at all levels.

4. Heard both sides and perused the records.

5. We do appreciate the report placed by the revenue and note the questionable modus operandi of the appellant. However, we consider that the appellant shall suffer, if thrown at the thrushhold, without an opportunity granted for hearing on merit since there was an ex-parte order against the appellant. Also we appreciate that the appellant shall not stand to gain seeking belated appeal remedy. Considering the length of delay is 85 days only, we condone such delay to serve interest of justice. However, we note that if such deliberate practice is adopted by the appellant in the course of remand proceedings we hereby propose, the appellant shall be dealt accordingly under the law by the authority below.

6. In view of our above order condoning the delay, we admit the appeal.

7. We take up the stay application accordingly for hearing today.

8. Ld. Counsel's averment is that the DEPB benefit, if any, shall be limited to Rs.5,62,564/-. Order-in-original is arbitrary and has raised exorbitant demand. Therefore, Ld. Counsel prays that to protect the interest of revenue till hearing of appeal by Ld. Commissioner(Appeals), a lenient view maybe taken to direct deposit of Rs.5 lakhs.

9. Considering that the ex-parte order needs reconsideration, We direct the appellant to make deposit of Rs.5 lakhs within four weeks from today to protect interest of Revenue. The appellant is also directed to produce the challan before Ld. Commissioner(Appeals) on 31.7.09 with an application for fixation of date of hearing. If the challan is produced and application is made, Ld. Commissioner(Appeals) shall fix a date for hearing. The appellant or its Counsel appearing shall take notice on the same day. We make it clear that if the appellant fails to appear on the date fixed by the Ld. Commissioner(Appeals), the matter shall be decided in accordance with law by the Ld. Commissioner without waiting for the Appellant further. In view of our order as above, MA(COD), Stay application and appeals are disposed. The

appeal is disposed of by way of remand only without expression of any opinion on the merits of the case.

Order dictated in the open Court.

(D.N.Panda)
Judicial Member

(Rakesh Kumar)
Member Technical

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