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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/477 /2009 - CU[DB] Date 06/10/2009

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

To :
M/S RADHIKA SPINNING MILLS LTD.
21, KM STONE, DELHI-HISAR HIGHWAY,
DISTT.HANSI-125033 (HARYANA)

M/S RADHIKA SPINNING MILLS LTD. Appellant
Vs
C.C. (ICD) NEW DELHI MISC. ORDER NO.C/114/09 & STAY ORDER NO.C/268/09 Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/407/ 2009 CU[DB] dated 29.09.09 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
   C.C. (ICD) NEW DELHI
   ICD, TUGHLAKABAD, NEW DELHI 110020.
2. Adv. / Consult
   MR.T.R. RUSTAGI. ADV., SD-84,
   TOWER APPTS., PITAMPURA, DELHI – 34.
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
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

C/COD/133/09 -CUST-BR
C/S/2161/09 in
Appeal No.C/477/2009

{Arising out of Order-in-Appeal No.CC/A/ICD/61/2009 dated 12.03.2009 passed by the Commissioner of Customs (Appeals), New Delhi}

Date of Hearing:28.08.2009
Date of decision: 28.08.2009

Radhika Spinning Mills Ltd. ...Appellant

Vs.

CC, TKD, New Delhi. ... Respondent

Present for the Appellant :Shri R. Rustogi, Advocate
Present for the Respondent:Shri. Vijai Kumar , SDR

Coram: Hon'ble Mr.D.N.Panda, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

Final **ORDER NO.** C/407/09 **DATED:28.08.2009**
Stay Order No C/268/09 4/ISL Order ~~No~~ No C/114/09
PER: D.N.PANDA

Ld. Counsel Shri Rastogi submits that the appeal was filed with delay of 22 days. Such delay was not intentional nor malafide. Only the sickness of Managing Director who was hospitalized and ultimately died has prevented appellant to file the appeal in time. Therefore, appeal may be admitted condoning the delay.

2. Moving the stay application, Shri Rustogi submits that while bank guarantee of Rs.79,95,922/- has already been encashed, the appellant was directed to make deposit of Rs.1.00 Crore for hearing of his appeal by ld. First Appellate Authority below. Order of such kind was passed on 12.03.09. By this time, the appeal must have been dismissed, since the ordered amount of Rs.1.00 Crore was not

deposited. He prays that ld. Commissioner (Appeal) may be directed to hear the appellant without being thrown at the threshold and without calling for predeposit.

3. While this is the grievance of the appellant, ld. DR Shri Vijay Kumar strongly opposes submitting that nearly 12 years have been expired but the appellant has not come out with clean stands. He submits that when the export obligation has not been fulfilled and the factory has already been closed, this appellant will not get any relief, even if, the matter goes back to the lower appellate authority.

4. Heard both sides and perused the records.

5. We make it clear to both sides that we do not encourage such orders to be intervened by us. But to remove hardship, we have recently passed an order of present nature following the decision of the Tribunal in the case of Bhagwati Gases Ltd. vs. Commissioner of Central Excise, Jaipur-I reported in 2008 (226) E.L.T. 468 (Tri.-Del.). Appeal is a substantial right, but such right is conditional. This is the case where the cry of the appellant is that appeal itself shall be thrown at the threshold if it is not heard on merit. We do appreciate that nothing prevents the appellant to be heard when bank guarantee was encashed. Thus, appellant deserves to be heard by the ld. Appellate Authority dispensing the pre-deposit, in view of the bank guarantee of Rs.79,95,922/- has already been encashed. Therefore we condone the delay and admit appeal.

6. In view of the aforesaid peculiar facts and circumstances of the case, we direct the appellant to appear before the ld. Commissioner (Appeals) on **30th September, 2009** and file an application for fixing a date of hearing. If such an application is filed

alongwith copy of this order, ld. Commissioner shall do well to hear the appellant on a date that shall be fixed by him. We expect that the litigant may not have grievance further, if the process of justice is followed by the ld. Appellate Authority below to grant fair opportunity of hearing passing a reasoned and speaking order.

7. With the aforesaid conclusion, application for COD, stay application and appeals are disposed.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

Anita