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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/632 /2009 - CU[DB]   Date 04/02/2010

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

To :
M/S BIRLA VXL LIMITED.
UNIVERSAL CLOTHING. 14/5. MATHURA ROAD,
FARIDABAD. HARYANA.
M/S BIRLA VXL LIMITED.   Appellant

Vs

C.C. (ICD) NEW DELHI   Respondent

I am directed to transmit herewith a certified copy of **Final order** C/06/ 2010 CU[DB] dated 25.01.10 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/12/10

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   C.C. (ICD) NEW DELHI
   ICD. TUGHLAKABAD. NEW DELHI 110020.
2. Adv. / Consult
   MR.MARS & PARTNERS.ADV & SOLICITORS
   A-415. DEFENCE COLONY. LGF. N. DELHI.110024
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

Customs Stay Application No./2901/ 09 in Appeal No.C/632 of 2009

(Arising out of Order-in-Appeal No.CC(A) Cus./ICD/214/2009 dated 13.7.2009 passed by the Commissioner of Customs (Appeals), New Customs House, IGI Airport, New Delhi)

Date of Hearing/Decision: 25.01.2010

For approval and signature:
Hon'ble Mr.M.Veeraiyan Member (Technical)
Hon'ble Mr.D.N.Panda, Judicial Member

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	NO
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s.Birla VXL Ltd. Appellant

Vs.

CC, New Delhi Respondent

Present for the Appellant : Shri Tushar Jain, Advocate
Present for the Respondent: Shri Sansar Chand, SDR

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

Final **ORDER** No. C/6/10
Stay Order No C/12/10

PER: M.VEERAIYAN

Considering the issue involved in the appeal, we waive pre-deposit of dues as per the impugned order and proceed to dispose of the appeal finally.

2. The original authority vide order dated 24.3.2009 confirmed demand of duty of Rs.6,87,514.50 for non fulfilment of export obligation; he also ordered for recovery of interest and also imposed penalty of Rs.1,50,000/-. The order dated 24.3.2009 was admittedly received by the appellant on 2.4.2009 and they ought to have also filed appeal on or before 2nd June, 2009. They have filed appeal after a delay of thirty days i.e. on 1st July, 2009. They have also filed application seeking condonation of delay in filing the appeal on the ground that the concerned persons of the appellant's company dealing with the subject matter was abroad at the material time and therefore the delay was caused. The Commissioner (Appeals) held that the work of the company did not come to stand still when some one dealing with a particular charge was absent because of certain reasons.

3. After hearing both sides, we hold that reasons given by the appellant merit consideration. Further, ld.Advocate submits that very basis of the demand that they have not produced EODC does not survive as they have since obtained export obligation discharge certificate. It is also not disputed that the delay was within the condonable power of the Commissioner (Appeals).

4. In view of the above, we condone the delay in filing the appeal before the Commissioner (Appeals). We set aside the impugned order passed by the Commissioner (Appeals) and

direct him to decide the matter afresh on merits after granting reasonable opportunity of hearing to the appellants.

5. The appeal is allowed by way of remand. The stay petition is also disposed of.

(M.VEERAIYAN)
TECHNICAL MEMBER

(D.N.PANDA)
JUDICIAL MEMBER

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