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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. ST/715 /2008 - CU[DB] Date 04/02/2010

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

To :
M/S BHARAT SANCHAR NIGAM LTD.
OFFICE OF THE GENERAL MANAGER, TELECOM
DISTRICT, AMBEDKAR CHOWK, NEAR HIGH
COURT, JABALPUR, MADHYA P
M/S BHARAT SANCHAR NIGAM LTD. Appellant

Vs

C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order ST/02/ 2010 CU[DB]** dated 18.01.10 passed by the Tribunal under Section 129. (B) of the Customs Act.1962 & Financial Act 1994 relating to Service Tax

Alongwith Stay Order No ST/27/10

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   C.C.E BHOPAL
   HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult
   MR.KUMAR & ASSOCIATES, ADVOCATES
   J&K 121,2ND FLOOR,LAXMI NAGAR, DELHI-110092
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.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 18.1.2010

Stay Application No.2208 of 2008 and
Service Tax Appeal No.715 of 2008

Arising out of the order in appeal No.107/BPL/2008 dated 24th July, 2008 passed by the Commissioner (Appeals), Customs , Central Excise & Service Tax, Bhopal.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Member (Technical)
Hon'ble Shri D.N.Panda, Member (Judicial)

1	Whether Press Reporter 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 CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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

Bharat Sanchar Nigam Limited ... Appellant/applicant

Vs.

C.C.E., Bhopal .... Respondent

Appearance:

Shri Chandan Kumar, Advocate for the appellant/applicant
Shri Vijai Kumar, Authorized Departmental Representative (SDR) for the Revenue

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

Final Oral Order No. ST/2/10
Stay Order No ST/27/10

Per M. Veeraiyan:

Heard both sides.

2. As a short issue is involved, the stay petition is disposed of and the appeal itself is taken for final disposal. The Commissioner (Appeals) has dismissed the appeal of the appellant on the ground of time bar holding that

against the order in original dated 31st October, 2006 despatched on 6.4.06 by Speed Post the appellant has filed appeal before Commissioner (Appeals) only on 7.4.08 after more than 2 years.

3. Learned Advocate submits that the appellant came to know of order of the original authority only in February 2008 after the Superintendent , Service Tax by telephonic message informed the GMTD about the tax liability. Thereafter, they applied on 23.2.2008 for a copy of the order dated 31.10.2006. For this purpose, he relies on the affidavit dated 21st October 2008 of Shri A.K. Tiwari, DGM Finance GMTD, Jabalpur. The affidavit does not disclose when exactly the Superintendent Service tax contacted the appellant by telephone. The affidavit also does not disclose the basis on which the DGM Finance has chosen to file affidavit categorically stating "That the order dated 31.3.06 was never communicated nor it has been served to the GMTD which has been passed by the Adjudicating Authority". On enquiry, the learned Advocate relies on the internal communication dated 5.8.08 from Chief Accounts Officer to Sub-Divisional Engineer, Jabalpur seeking clarification as to whether the order of the original authority was received in the office. There is an endorsement on the said letter that " this letter has not been received in this office" duly countersigned by the Divisional Engineer. In other words, the learned Advocate is relying on the casual verification report given by the Divisional Engineer with reference to their Dak Register of GMTD office during the period 6.4.06 to 6.5.06.

4. On the other hand, the Department has produced the evidence in the form of extract from the despatch register (along with original file for perusal) indicating that the letter was despatched by Speed Post on 6.4.06. Further, we find that on behalf of the appellants, the Accounts Officer Shri Abhishek Shukla has appeared for personal hearing on 27.1.2006. Having appeared for personal hearing, there is no submission whether they have made any efforts to find out whether the orders have been passed or received by them. Under these circumstances, the claim that it was only after a telephone call by the Superintendent Service Tax somewhere in February

2008 they came to know about the order passed by the original authority appears not acceptable. The evidence produced by the Central Excise Department indicating service by despatch by Speed Post is reliable.

5. In view of the above, weighing both the evidences sought to be relied upon by the Department and those sought to be relied upon by the appellants, we hold that the decision of the Commissioner (Appeals) that the appellant has filed the appeal belatedly and beyond his power of condonation cannot be faulted.

Per D.N. Panda:

6. We are conscious that appellant is a Public Sector Undertaking and shall suffer if delay in seeking appeal before the first Appellate authority is not condoned. But the affidavit given before us was not at all before the learned Appellate authority to consider the prayer by the appellate authority . Also the affidavit does not state the date on which passing of order in original came to knowledge of appellant to become vigilant. Even the document relied upon by the appellant today which is a communication between the Chief Accounts Officer and Sub-Divisional Engineer is a document coming out after expiry of limitation period. The affidavit which was sworn on 21st October 2001 does not disclose whether the appellant was vigilant of its right before expiry of limitation. Nothing comes out from the records to appreciate that the appellant was quite vigilant before expiry of the limitation and also soon after such limitation. We do appreciate that no one shall prefer to cause prejudice to himself following the ratio laid down by Apex Court in the case of Collector Land Acquisition Anantnag and Another vs. MST Katiji and others reported in 1987 (28) ELT 185 (SC). But where a very casual approach has been made for compliance to law to seek the appellate remedy, that establishes scanty regard to law. In the case of N. Balakrishnan vs. M. Krishnamurthy reported in 2008 (228) ELT 162 (SC) length of delay was held to be immaterial while causes of delay is material for consideration of delay condonation application. When we

look to the manner of filing appeal, we are unable to find appellant's vigilant attitude to seek appeal. The communications relied upon by appellant were of post limitation period. An indolent has no right to seek condonation of delay. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a step-motherly treatment when the State is the Applicant. We are also conscious of the Apex Court decision in State of Nagaland vs Lipok Ao reported in 2005 (183) ELT 337 (SC) where the Hon'ble Court condoned 57 days of dealy on the factual background in the light of legal principles laid down under Section 5 of Limitation Act, 1963. But learned Appellate Authority being a statutory in this case, is required to act within the in-built provisions of limitation under Finance Act, 1994. Accordingly, in fiscal matter, Section 5 of law of limitation is excluded from operation. Therefore, learned Commissioner (Appeals) was prevented to condone the delay when belated appeal was filed before him. We are, therefore, unable to find that it is a case which deserves any consideration or leniency. All these observations made above compels us to declare the Appellant remediless before first Appellate authority for reason of delay attributable to the appellant without the same being inadvertent. Therefore, we are unable to consider the prayer made today for condonation of delay by learned Commissioner (Appeals) who as a creature of statute has limited discretion to condone delay.

7. In view of the above, the appeal is rejected. Stay petition is also disposed of.

(M. Veeraiyan)
Member (Technical)

(D.N.Panda)
Member (Judicial)

scd/