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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/517 /2009 - CU[DB] Date 09/02/2010
STS/1917/09, ST/COD/127/09

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

To :
M/S DEEP MANI TOURS & TRAVELS,
E-30, DEEP COMPLEX, OPP. DUSSHERA MAIDAN,
SECTOR-9, MALVIYA NAGAR, JAIPUR (RAJ.)

M/S DEEP MANI TOURS & TRAVELS, Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/03/ 2010 CU[DB] dated 04.01.10 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/31/10 & Misc Order No ST/11/10

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
   C.C.E. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.BIPIN GAR, ADV
   B-1/1289-A VASANT KUNJ NEW DELHI - 70
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.
DIVISION BENCH

ST/COD/127/09 in Appeal No.ST/517/2009
ST/STAY/1917/09 in Appeal No.ST/517/2009

(Arising out of Order-in-Appeal No.125 (DK) ST/JPR-I/2008 dated. 12.1.2009 passed by the Commissioner (Appeals), Central Excise, Jaipur)

Date of Hearing: 04.01.2010
Date of Decision: 04.01.2010

M/s.Deep Mani Tour & Travels — Appellant

Vs.

CCE, Jaipur — Respondent

Present for the Appellant: Shri Bipin Garg, Advocate
Present for the Respondent: Shri Sansar Chand, SDR

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

Final. **ORDER NO.** ST/3/10
Stay Order No ST/31/10
PER: D.N.PANDA Misc Order No ST/11/10

This is an appeal. The appellant sought first appeal remedy on 27.8.2008 before the first appellate authority against order of adjudication received by it on 22.4.2008. Ld.Counsel submits that in usual course, the appellant could have filed appeal by 21.7.2008. But for certain difficulty, they were prevented to file the appeal before that date. Accordingly, appeal was filed on 27.8.2008. Condonation of such delay was within discretionary power conferred on Commissioner (Appeals). Therefore he prays that even though service tax has already been paid, the appellant shall seriously suffer if appeal is not heard condoning delay exercising discretionary power conferred on the Commissioner (Appeals). He further submits that for reasons beyond control of the appellant, filing of appeal was delayed and such delay was not deliberate. He further submits that no one shall prefer to prejudice his interest without seeking appeal remedy. Therefore, the appellant came forward with appeal on 27.8.2008. Last date for admitting appeal exercising discretionary power for condonation of delay is till 21.10.2008 under Finance Act, 1994. Length of delay is immaterial while cause of delay shall only be material to consider the case of the appellant to render justice to the appellant following the Apex Court decision in the case of N.Balakrishanan vs.M.Krishnamurthy-2008 (228) ELT 162 (SC).

2. Ld.SDR submits that the delay being not properly explained before the learned first appellate authority, he did not exercise his discretionary power. Therefore, when the first appeal was lost on limitation issue, there is no scope for admission of appeal by Tribunal. Here also there is delay by the appellant in routine manner.

3. Heard both sides and perused the records.

4. We have gone thorough the operative part of order passed on 23.7.2008 by the learned Commissioner (Appeals). He had rejected the appeal of the appellant for delay in filling appeal the same. He was of the view that mere delay in receipt of order appealed shall not grant right to the appellant to pray for condonation. We appreciate that no one shall prefer to prejudice himself when there was huge demand faced by him. Causes of justice cannot be overlooked by technicality of delay when the appellant has cause for condonation of delay and has faced service tax demand of Rs.17,37,265/- with equal amount of penalty and other consequences of law in adjudication.

5. Following the ratio laid down by Apex Court in the case of Balakrishanan vs.M.Krishnamurthy-2008 (228) ELT 162 (SC) and also decision in case of Mst Katji and others reported in 1987 (28) ELT 185 (SC), we find that the appeal of the appellant should not be thrown out from the process of justice at the threshold. Therefore, we remit the matter back to the learned Commissioner (Appeals) for consideration of the cause of delay made in filing appeal before him in the light of the Apex Court decision and pass appropriate orders in the appeal if an application for condonation of delay is made or any such application is borne by record before him.

5. With the aforesaid observation and having been guided by the Apex Court decision, we dispose off the stay petition, delay condonation application and appeal at this stage itself remanding the matter to the learned Commissioner (Appeals)

(D.N.PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNIAL MEMBER

mk