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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/700 /2009 - CU[DB] Date 19/05/2010
ST/698/09, ST/COD/234-35/09, ST/S/2686 & 2698/09

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

To :
M/S ASHOKA TRADING COMPANY

OMKARANAND SOCIAL PLACE DHARMASHALA
HIRALAL ROAD RISHIKESH DISTT DEHRADUN

M/S ASHOKA TRADING COMPANY Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/27/ **2010 CU[DB]** dated 26.04.10 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Alonwith Stay Order No ST/93-94/10 &
Misc Order No ST/44-45/10

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   C.C.E. MEERUT I
   EXCISE CHOWK,OPPOSITE CHOUDHARY CHARAN SINGH UNIVERSITY MANGAL PANDAY NAGAR, MEERUT - 250005.
2. Adv. / Consult
   MRS.RENU GUPTA,ADVOCATE
   1058, SECTOR-3, R.K.PURAM, N DELHI-22
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. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13. Office Copy
14. 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/234-235/09 in Appeal No.ST/698 & 700 /09
ST/Stay/2686 & 2698 /09 in Appeal No.ST/698 & 700/09

(Arising out of Order-in-Appeal No.190/08 dated 31.10.2008 and OIA No.211-CE/MRT/2008 22.12.2008 passed by the CCE(A), CE & C, Meerut-I)

Date of Hearing: 26.04.2010
Date of Decision: 26.04.2010

M/s.Ashoka Trading Company — Appellant

Vs.

CCE, Meerut — Respondent

Present for the Appellant: Ms.Renu Gupta, Advocate
Present for the Respondent: Shri Fateh Singh, DR

Coram:

Hon'ble Dr.Chittaranjan Satapathy, Technical Member
Hon'ble Mr. D. N. Panda, Judicial Member

Misc Order No ST/44-45/10
Stay **ORDER NO.** ST/93-94/10
Final Order No ST/27/10

PER: D.N.PANDA

ST/MA(COD)/234 of 2009
SP-2686 of 2009
ST/Appeal No.698 of 2009

Moving the application for condonation of delay registered as ST/COD/234/09 in Appeal No.ST/698 /09, learned Counsel for the appellant submits that when the impugned order was communicated to the appellant on 26.11.2008, the appellant preferred the appeal before the Tribunal duly on 23.02.2009. But such appeal was returned back by the Registry on 29.7.2009. Thereafter, the appellant was bed ridden upto 16.08.2009. Accordingly, the appellant re-submitted the appeal papers through courier on 21.08.2009, which was received by the Tribunal on 24.08.2009. There was no deliberate delay made by the appellant nor there was any malafide intention on the part of the appellant to seek appeal remedy. The appellant did not prefer to cause prejudice to itself. Medical certificate has been enclosed to the application for condonation of delay for kind consideration of Tribunal otherwise shall cause grave injury to the appellant. Therefore without dismissing the appeal on the ground of limitation, the appellant may be given an opportunity of hearing admitting the appeal and condoning the delay.

2. There is no objection from other side for which MA(COD) is allowed and after condoning the delay, stay application registered as ST/Stay/2686/09 in Appeal No.ST/698/09 is taken up for hearing.

3. Ld. Counsel for the appellant submits that there was no quantification of demand made by first appellate order for recovery. Therefore in absence of quantification of demand which is apparent from para 9 of the impugned order there may be stay of operation thereof.

4. Revenue has nothing to suggest as to whether the impugned order is executable.

5. Hearing both sides, we are of the view that stay application should be allowed in view of the difficulty expressed by both sides. We order accordingly.

6. So far as the appeal is concerned, the matter appears to be of the nature as that is before the Larger Bench in Amit Sales. Accordingly Registry is directed to issue notice as soon as the Larger Bench decision comes up. We make it clear to both sides that they

should also bring it to the notice of Bench as and when the Larger Bench decision in the above case comes up.

ST/MA(COD)/235 of 2009
SP-2698 of 2009
ST/Appeal No.700 of 2009

7. In respect of ST/COD/235/09 in Appeal No.ST/700 /09, learned Counsel for the appellant explains that there was only two days delay in filing appeal before Tribunal for unavoidable reasons by appellant and that too due his ill health. Such fact being proved by medical certificate, delay may be condoned and appeal may be admitted for hearing. Finding no serious objection from other side, the delay is condoned and both stay application and the appeal are taken up for hearing.

8. Learned Counsel for the appellant submits that the ld. Commissioner (Appeals) did not hear the appeal on merits finding that the appeal was filed belatedly. Although the order-in-original was received on 28.2.2008 and the appeal was filed on 7.8.2008 that is within discretionary period of three months under Section 85 (3) of Finance Act, 1994 and delay can be condoned by ld. Commissioner (Appeals). Under Service Tax law, after expiry of first three months period, discretion is conferred on learned appellate authority below to entertain such appeal if filed within further period of three months. He may exercise such discretion if the matter is sent back for his consideration.

9. To the above proposition of the appellant, Revenue agrees that if a proper application is made by the appellant before learned Commissioner (Appeals) stating reason for delay, discretionary power may be exercised by the ld. Commissioner (Appeals).

10. Heard both sides and perused the records.

11. We have noticed that there was only 5 months and 2 days delay before ld. Commissioner (Appeals) which includes discretionary period of three months. Proviso to Section 85(3) of Finance Act, 1994 has provided six months period in aggregate for seeking appeal remedy before first appellate authority which includes discretionary period of three months. Accordingly we are of the opinion that the appellant deserves consideration by ld. Commissioner (Appeals). Accordingly, we direct that the appellant makes proper application explaining the delay beyond frist three months period, before the learned Appellate Authority and draws his attention to the above statutory provision praying for exercise of his discretion, ld. Commissioner (Appeals) shall consider such prayer and may condone the delay and admit the appeal for hearing on merits subject to order pre-deposit if any that may be called for.

12. In view of our aforesaid observation, stay application filed by the appellant is also disposed off and the appeal is remanded to the ld. Commissioner (Appeals) for doing the needful.

(Dr. CHITTARANJAN SATAPATHY)
TECHNIAL MEMBER

(D.N.PANDA)
JUDICIAL MEMBER

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