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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. E/2844/2009 – SM[BR] E/ STAY / 2928 / 2009-SM[BR] Date 02/12/2009

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

To :
M/S MAHASHAKTI ENGINEERING CO.,
E-34, BULAND SHAHAR ROAD, INDUSTRIAL AREA,
GHAZIABAD (U.P.)

M/S MAHASHAKTI ENGINEERING CO., Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1480/ 2009 –SM[BR]&S/660/2009 dated 30.11.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM 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
   MR.RAJESH KUMAR
   24A, DDA SFS FLAT, MOUNT KAILASH, EAST OF KAILASH, N.DELHI

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)
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 30.11.2009

Stay Application No.2928 of 2009-SM and Central Excise Appeal No.2844 of 2009-SM

Arising out of the order in appeal No.173-CE/GZB/2009 dated 16.7.09 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Meerut I.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Member (Technical)

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?	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 Mahashakti Engineering Company ... Appellant

Vs.

C.C.E,. Meerut I .... Respondent

Appearance:

Shri Rajesh Kumar, Advocate for the appellant
Shri R.K. Saini, Authorized Departmental Representative (SDR) for the Revenue

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 1480/2009 SM (BR) & S-660/2009 SM (BR).

Per M. Veeraiyan:

Heard both sides on the stay petition for a while. As the appeal itself could be disposed of on a short point, the stay petition is disposed of and the appeal taken up for final hearing with the consent of both sides.

2. The original authority vide order dated 26.12.2008 confirmed the demand of Rs.3,57,462/- along with interest and imposed equal amount as

penalty. The said order was admittedly received by the appellant on 5.1.2009. The appeal before the Commissioner (Appeals) has been filed on 13.4.09 which is beyond a period of 90 days (60 days normal period + 30 days within the power of condonation of the Commissioner) and therefore, the Commissioner (Appeals) without going into the merits of the case, dismissed the appeal as time-barred.

3. Learned Advocate submits that the managing partner of the appellant firm was unwell for a considerable time and was being hospitalised and that caused the delay in filing of the appeal. He also submits that they have got a strong case in their favour on merits.

4. Learned DR submits that the time-limit of 60 days for filing of appeal with power to condone delay only up to 30 days cannot be exceeded to by the Commissioner (Appeals) as settled by various decisions of the Tribunal and also the Hon'ble Supreme Court.

5. As the appeal has been filed with delay which is even beyond the powers of condonation of the Commissioner (Appeals), the order of the Commissioner (Appeals) in rejecting the appeal cannot be faulted.

6. In view of the above, I do not find any justification to interfere with the order of the Commissioner (Appeals). The appeal is, therefore, rejected.

7. Stay petition is also disposed of.

(M. Veeraiyan)
Member (Technical)

scd/