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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

Date 28/10/2009

Appeal No. E / 2561 / 2009-SM[BR] &E/ STAY / 2647 / 2009 -SM[BR]

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

To :
M/S MALHOTRA RUBBERS LTD
D-04, SECTOR XI, NOIDA, GAUTAM BUDH NAGAR,U.P. — Appellant
Vs
M/S MALHOTRA RUBBERS LTD — Respondent

C.C.E. NOIDA

I am directed to transmit herewith a certified copy of **Final order No**. 1310 / 2009 -SM[BR] & S/ 615 / 2009dated 16.10.2009 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. NOIDA
   C-56/42, SECTOR-62, NOIDA-201307
2. Adv. / Consult
   MR.S.D.GAUR
   SB-108, SHASTRI NAGAR, GHAZIABAD.

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
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, West Block No. 2, R.K. Puram, NEW DELHI

COURT No. III

E/STAY NO. 2647 OF 2009 IN AND CENTRAL EXCISE APPEAL NO. 2561 of 2009-SM

[Arising out of Order-in-Appeal No. 04/08 dated 22.4.2009 passed by the Commisioner (Appeals), Central Excise, Noida]

Date of hearing/decision: 16th October, 2009

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	yes

M/s. Malhotra Rubbers Ltd. — Appellant

Vs.

CCE, Noida — Respondent

Appearance:

Shri S.D. Gaur, Consultant for the appellants;
Shri R.K. Saini, SDR for the respondent

Coram:

Hon'ble Mr. P.K. Das, Member (Judicial),

FINAL ORDER NO. 1310/2009 SM (BR) **dated**

STAY ORDER NO- 615/2009 SM(BR)

Per P.K. Das:

After hearing both sides and on perusal of the records, I find that the issue involved in this case is in narrow compass and, therefore, after granting stay appeal itself is taken for hearing.

2. Commissioner (Appeals) dismissed the appeal as time barred. Learned Counsel on behalf of the appellants submits that preamble of the adjudication order indicates that filing of appeal in within 3 months. He submits that on the basis of preamble of the order the appellants filed appeal and there is a delay of 23 days. He further submits that the Commissioner (Appeals) rejected the appeal on the ground that there is a delay of 33 days.

3. On the other hand, learned D.R. on behalf of the Revenue submits that Section 35(1) of Central Excise Act, 1944 provides filing of appeal within 60 days and, thereafter, Commissioner (Appeals) may condone the delay of 30 days. He submits the preamble of adjudication order cannot over ride the provisions of the Act. In this connection, he relied upon the decision of the Hon'ble Supreme Court in the case of M.R. Tobacco Pvt. Ltd. vs. U.O.I., reported in 2007 (213) ELT A 115 (S.C.).

4. I find force in the submission of the learned D.R. Section 35(1) of the Act empowers the Commissioner (Appeals) to condone the delay of

30 days after stipulated period of 60 days. Contention of the learned Counsel that the appeal was filed as per direction of the preamble of the adjudication order and, therefore, delay should be condoned cannot be accepted. I also noticed that the Hon'ble Supreme Court in the case of M.R. Tobacco Pvt. Ltd. (supra) held that the Commissioner (Appeals) is not empowers to condone the delay beyond 30 days.

5. In view of that, I do not find any reason to interfere with the impugned order of the Commissioner (Appeals). Accordingly, appeal filed by the appellants is rejected. Stay application is also disposed of.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK