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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/1907/2009 – SM[BR] & E/STAY / 1964 / 2009

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

To :
M/S RAIGARH ISPAT & POWER PVT. LTD.
"MADHUBAN" BEHIND BALRAM GARAGE, KOTRA ROAD, DISTT. RAIGARH (C.G.)
M/S RAIGARH ISPAT & POWER PVT. LTD. — Appellant

Vs

C.C.E. RAIPUR — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1311 / 2009 –SM[BR]&S/620/2009 dated 5.10.2009 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. RAIPUR
   CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.
2. Adv. / Consult SHRI H.V.GIRNIKAR CA.
   M/S APPELLANTS;-------------

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 No. III

E/STAY/1964/2009 IN AND
CENTRAL EXCISE APPEAL NO. 1907 of 2000-SM

[Arising out of Order-in-Appeal No. 42/RPR-I/2009 dated 02.4.2009 passed by the Commissioner (Appeals-I), Customs & Central Excise, Raipur]

Dated of hearing/decision: 5th 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?	
2.	Whether it would be released under Rule 27 of the 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?	
4.	Whether order is to be circulated to the Departmental authorities?	Yes

M/s. Raigarh Ispat & Power Pvt. Ltd., Appellants

Vs.

CCE, Raipur Respondent

Appearance:

Shri H.V. Girnikar, Advocate, Advocate for the appellants;
Shri V.K. Saxena, Jt. CDR for the Revenue

Coram:

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

FINAL ORDER NO. 1311/2009 SM (BR) **dated**

& S - 620/2009 SM (BR)

Per P.K. Das:

The issue involved in this case is in narrow compass and, therefore, after granting stay, appeal is taken up for hearing.

2. After hearing both sides and on perusal of the records, I find that the Commissioner (Appeals) dismissed the appeal on the ground of time bar.

3. Learned Counsel on behalf of the appellants submits that the preamble of the adjudication order indicates that appeal can be filed within 3 months from the date of communication of the order. He submits that the appellants is a small entrepreneur and he has no knowledge of amendment of law and period of condonation of delay of 30 days. He submits that the appellants acted on the basis of preamble of the adjudication order. So, delay of two days beyond 30 days would be liable to be condoned taking into consideration the mistake in the preamble of Adjudication order. He further submits that the Commissioner (Appeals) passed the order without giving opportunity of hearing in violation of principle of natural justice. He relied upon the decision of the Tribunal in the case of BMC Electroplast (P) Ltd. vs. CCE, Kolkata-V, reported in 2006 (205) ELT 1120 (Tri. – Kolkata).

4. Learned Jt. CDR on behalf of the Revenue submits that preamble of the adjudication order cannot override the provisions of Central Excise Act, 1944. He submits that even if preamble of the adjudication order is taken for consideration, it is indicating filing of appeal within 3 months, which was not complied by the appellants. He also submits that the Hon'ble Supreme Court in the case of Singh Enterprises vs. CCE, Jamshedpur, reported in 2008 (221) ELT 163 (S.C.) held that the Commissioner (Appeals) is not empowered to condone the delay beyond 30 days as provided under Section 35 of the Act.

5. After hearing both sides and on perusal of the records, I find that the Hon'ble Supreme Court in the case of Singh Enterprises (supra) held that the Commissioner (Appeals) has no power to condone the delay beyond 30 days as provided under Section 35 of the Act. In the present case, there is no dispute that the delay is 32 days. So, I agree with the order of the Commissioner (Appeals). In any event, request of the appellants to give an opportunity of personal hearing before the Commissioner (Appeals) is empty formality as there is no dispute of fact of delay in filing appeal of 32 days. I agree with the contention of the learned Jt. CDR that preamble of the adjudication order cannot override the provisions of the Act.

6. In view of the above discussion, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly,

appeal filed by the appellants is rejected. Stay application is disposed of accordingly.

(Dictated & pronounced in the OpenCourt.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK