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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/1008/2009 – SM[BR]&E/STAY/970/2009& E/COD/69/2009-SM[BR] Date 18/11/2009

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

To :
SHRI RAVINDER SINGH THAKUR,
B-6/4, MIYAWALI NAGAR, PASHCHIM VIHAR, NEW DELHI

SHRI RAVINDER SINGH THAKUR, Appellant
Vs
C.C.E. DELHI I Respondent

am directed to transmit herewith a certified copy of **Final order** No.1439/2009-SM[BR]&S/647/2009&M/229/09 dated 9.11.2009 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. DELHI I
   C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002
2. Adv. / Consult
   MR.MANU SHARMA & BALAJI SUBRAMANIAN, ADVOCATES
   B-34, LGF, NIZAMUDDIN (EAST), NEW 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
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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:9.11.2009**

**Condonation of Application No. 69 of 2009**
**Stay Application No.970 of 2009 and**
**Central Excise Appeal No.1008 of 2009-SM**

Arising out of the order in original No.22/2008 dated 22.10.08 passed by the Commissioner of Central Excise, Delhi I

Shri Ravinder Singh Thakur ... Appellant/applicant

Vs.

C.C.E., Delhi I .... Respondent

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? | Yes |
| 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 |

Appearance:

Shri Balaji Subramanian, Advocate for the appellant/applicant
Shri S.K. Bhaskar, Authorized Departmental Representative (SDR) for the Revenue

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

Oral Order No. 1439/2009 SM (BR)
S-647/2009 SM(BR) +
M-229/2009 SM(BR)

Per M. Veeraiyan:

In view of the grounds contained in the application for condonation of delay, the delay is condoned.

2. After hearing both sides for a while on the stay petition, I consider that it is expedient to dispose of the appeal finally and accordingly, waive pre-deposit of the penalty of Rs.50,000/- imposed on the appellant and proceed to dispose of the appeal.

3. The relevant facts, in brief, are that one M/s Shri Krishna Agencies with Shri Krishan Kishore Aggarwal as proprietor was according to the Department, involved in fraudulent claim of rebate on export amounting to Rs.1.74 crores. The said Shri Krishan Kishore Aggarwal in his statement submitted that Shri Ravinder Singh Thakur who was a partner in another firm by name Sarthak Exim Pvt. Ltd. (Shri Krishan Kishore Aggarwal was also a partner in the said firm) that the said appellant Shri Ravinder Singh Thakur was dealing with the procurement of inputs from Surat and he was also dealing with the export and withdrawal and disposal of rebate amounts sanctioned to the firm M/s Shri Krishna Agencies. Except the statement of Shri Krishan Kishore Aggarwal, no other evidence has been relied upon against the appellant. Commissioner by the impugned order imposed penalty of Rs.50,000/- on Shri Ravinder Singh Thakur, the appellant holding that the appellant along with Shri Krishan Kishore Aggarwal was jointly and severally responsible for all the activities of M/s Shri Krishna Agencies.

4. Learned Advocate for the appellant submits that the appellant was in Dubai during the period 11th September 2005 to 11th December 2007.The statement of Shri Krishan Kishore Aggarwal was taken in November 2006, December, 2006, January 2007 and May, 2007 during which period the appellant was out of the country. The finding of the Commissioner against the appellant was that the appellant "disappeared from the scene at the opportune moment to avoid answering questions of the investing officers". Such a finding is baseless. He submits that the appellant has nothing to do with the fraudulent export, if any, by Shri Krishna Agencies. He seeks setting aside the penalty imposed on the appellant.

5. Learned SDR reiterates the finding of the Commissioner. He submits that summons and show cause notice could not be served on the appellant and they were affixed on the Notice Board as envisaged under the provisions of the Central Excise law. He also submits that evidence given by Shri Krishan Kishore Aggarwal has been rightly relied upon by the Commissioner and penalty has been imposed on the appellant.

6. I have carefully considered the submissions from both sides. In the present proceedings, I am not concerned with the allegations/finding against Shri Krishna Agencies and its proprietor. Without expressing any views on the finding against the said Shri Krishna Agencies and its proprietor, I find that the evidence relied upon against Shri Ravinder Singh Thakur is only the statement of Shri Krishan Kishore Aggarwal. The finding of the Commissioner that the appellant "disappeared from the scene at the opportune moment to avoid answering questions of the investing officers" is not based on any evidence. When the appellant was away during the period of investigation in Dubai, to come to such a conclusion is erroneous. At any rate, that cannot be the ground for imposition of penalty on the appellant. As no other evidence has been relied upon linking export by Shri Krishna Agencies with Shri Ravinder Singh Thakur, I do not find any justification for sustaining the penalty.

7. The order of the Commissioner in so far as the same relates to imposition of penalty on Shri Ravinder Singh Thakur is set aside and the appeal is allowed with consequential relief as per law.

8. Stay petition is also disposed of.

(M. Veeraiyan)
Member (Technical)

scd/