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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/1523/2010 – SM[BR]&E/STAY/1552/2010& E / COD/206 /2010-SM[BR]Date **05/01/2011**

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

To :
MARGRA INDUSTRIES LTD
D-1, SECTOR XI, NOIDA,DISTT- GAUTAM BUDH NAGAR(UP)

MARGRA INDUSTRIES LTD Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order** No.21/2011-SM[BR]&S/22/2011&M/4/2011 dated 20.12.2010 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 II
OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult
MR.PRIYADARSHI MANISH,ADV
27, VIDYUT NIKUNJ, PLOT NO 112, I.P.EXTENSIOIN,
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-III

Date of hearing: **20.12.2010**

Excise Condonation of Delay No. 206 of 2010-SM, Stay No. 1552 of 2010 & Appeal No. 1523 of 2010-SM

[Arising out of Order-in-Appeal No. 196-CE/APPL/NOIDA/2009 dated 29.7.2009 passed by the Commissioner of Customs & Central Excise (Appeals), Meerut-II]

For approval and signature:

Hon'ble Mr. Rakesh Kumar, Member (Technical)

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 should 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?	

Margra Industries Ltd. Appellant

Vs.

CCE, Meerut-II Respondent

Appearance:

Appeared for the Appellant - Shri Priyadarshi Manish, Advocate

Appeared for the Respondent - Shri R.K. Gupta, SDR

Coram: Hon'ble Mr. Rakesh Kumar, Member (Technical)

Final Order No. 21/2011 SM(BR) + S-22/2011/SM(BR)
M-4/2011

Per Rakesh Kumar :

This is an appeal against the Order-in-Appeal No. 196-CE/APPL/NOIDA/2009 dated 29.7.2009 passed by the Commissioner of

Central Excise (Appeals), Noida. The impugned order dated 9.7.09 was received by the appellant on 12.8.09. There is no dispute about the date of the receipt of the order by the appellant. However, the appeal was filed on 26th March 2010 and thus there is delay of 135 days in filing of the appeal. The appellant, therefore, along with this appeal filed an application for condonation of 135 days delay in filing of the appeal.

2. Heard both the sides.

3. Shri Priyadarshi Manish, ld. Advocate for the appellant, pleaded that the appellant had supplied the copy of the impugned order along with other papers/documents on 7.9.09 for filing the appeal, that at the same time one more file of the appellant was also received and the papers of the present appeal got mixed up with the papers of the other matter, as a result of which the appeal was not filed within the limitation period, that the appeal in this matter was filed only when the appellant reminded him and the papers of this matter were located after searching for the same and thus, there were genuine reasons for delay. He, therefore, pleaded that the delay in filing of this appeal may be condoned. Ld. Advocate also stated that he is ready to give an affidavit stating the reasons for delay.

4. Shri R.K. Gupta, ld. DR opposed the application for condonation of delay and pleaded that there are no verifiable reasons for 135 day's delay filing of the appeal and that in absence of genuine and verifiable reason, the application for condonation of delay along with appeal must be rejected.

5. I have carefully considered the submissions from both the sides and perused the records. There is no dispute that there is 135 day's delay in filing of the appeal. The reason given in the application for condonation of delay is that the papers pertaining to this appeal got mis-placed in the

counsel's office. I am of the view that the reason given in the COD application for more than ~~few~~ few months delay is neither verifiable nor a valid reason for condoning the delay, specially for delay of this magnitude. The Hon'ble Supreme Court in the case of **N. Balakrishnan Vs. M. Krishnamurthy** reported in 2008 (228) ELT 162 (SC) has held that for condonation of delay what is material is as to whether there is genuine reason and not the length of delay. In this matter, I do not find any verifiable and genuine reason for delay in filing of the appeal. In view of this, the COD application and also the application for stay and the appeal is dismissed.

(Dictated & pronounced in open Court)

(RAKESH KUMAR)
MEMBER (TECHNICAL)

RM