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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/576 – 582 / 2009 –SM[BR]** Date **09/02/2011**

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

To :
M/S ALEMBIC LTD.
PLOT NO. 21/22, EPIP PHASE-I, JHARMAJRI, BADDI
(H.P.)

M/S ALEMBIC LTD. Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No. 115 – 121 / 2011 –SM[BR]** dated 2.2.2011 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. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017
2. Adv. / Consult
MR.TRIVEDI & GUPTA
G-1, JANAK APARTMENT, 9-SEVAK
NAGAR, B/H. GAUTAMNAGAR RACE
COURSE, **VADODARA.**
3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
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 -
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
(SM Appeal Branch)

[2] M/S ALEMBIC LTD.
PLOT NO. 21 /22 , EPIP PHASE-I, JHARMAJRI,
BADDI [H.P.]
[3] M/S ALEMBIC LTD.
[4] M/S ALEMBIC LTD.
[5] M/S ALEMBIC LTD.
[6] M/S ALEMBIC LTD.
[7] M/S ALEMBIC LTD.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:02.02.11
Date of decision:02.02.11

Excise Appeals No.E/576-582 of 2009-SM

[Arising out of common Order No.VIII(48)Tech/DBK/JNPT/60/2007/1089 dated 19.11.2008 passed by the Commissioner of Central Excise & Customs, Chandigarh].

M/s. Alembic Ltd. Appellant

Vs.

CCE, Chandigarh Respondent

For approval and signature:
Hon'ble Shri Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see 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?

Appearance: Rep. by Shri Saurabh Dixit, Advocate for appellant/Deptt.
Rep. by Shri S.K. Bhaskar, DR for the respondent.

CORAM: **Hon'ble Shri Rakesh Kumar, Member (Judicial)**

Final Order No. 115-121/2011 SM (BR) /Dated:

Per Rakesh Kumar

These appeals have been filed against the letters of the Dy. Commissioner (Technical) of Central Excise Commissionerate, Chandigarh, conveying the Commissioner's decision of refusal to condone the delay in filing of applications for fixation of brand rate and accordingly, dismissal of their applications. In these cases, the applications had been made by the appellants under Rule 6 of the Customs, Central Excise Duties and Service Tax Draw Back Rules, 1995 for fixation of the brand rates to the Commissioner of Central Excise, Chandigarh. While as per the provisions of the Rule 6, the brand rate application is required to be made within the period of 60 days from the date of 'let export' order and in this case, there was some delay beyond the prescribed period, as per the provisions of Rule 7(1) of the Draw Back Rules, the Commissioner has powers to condone the delay upto 30 days, beyond which it can be condoned by the Central Government. In this case, the delay is ranging from 11 days to 32 days and the Commissioner refused to condone the delay and dismissed the applications. Against this order of the Commissioner conveyed through the letter dated 19.11.2008 of the Dy. Commissioner (Tech), the appellants have filed these appeals.

2. Heard both the sides.

3. Shri Saurabh Dixit, Advocate, the learned Counsel for the appellants, pleaded that the delay upto 30 days could be condoned by the Commissioner, that there was genuine reason for this delay, that their applications have been dismissed without granting them personal hearing and that as per the Board's Circular No.13/2010-Cus dated 24.06.10 (para 4), delays should generally be condoned on receipt of the exporter's application in this regard. He also cited the judgements of the Tribunal in the case of **Rallis India Ltd. Vs. CCE, Bhopal reported in 2006 (202) ELT 845 (Tribunal-Delhi)** and also the judgement of the Hon'ble Karnataka High Court in the case of **Wipro Infotech Limited Vs. Union of India reported in 2001 (130) ELT 27 (Karnataka)** in support of his contention that the delay within the Commissioner's power should have been condoned.

4. Shri S.K. Bhaskar, DR pleaded that in terms of the Rule 6 of the Draw Back Rules while the normal prescribed period for filing the applications for fixing of the brand rate is 60 days from the date of 'let export' order, the delay in filing of the applications upto 30 days can be condoned by the Commissioner only on the sufficient cause being shown giving the reason as to why the exporter was prevented from filing the applications within the time limit and since in these cases, no sufficient cause has been shown, the applications have been rightly rejected. He also cited the Tribunal's judgement in the case of **Process Equipments & Vessels Engg. Co. Ltd. reported in 2009 (233) ELT 538 (Tribunal-Kolkata).**

5. I have carefully considered the submissions from both the sides and perused the records. In these cases, the applications for fixation of the draw back have been dismissed only on the ground that the same have been filed beyond the period of 60 days from the date of 'let export' order and the Commissioner has refused to condone the delay.

6. While the delay in this case is ranging from 11 days to 32 days and the delay of 30 days could be condoned by the Commissioner on sufficient cause being shown by the exporter and in terms of Board's Circular No.13/2010 dated 24.06.10, a liberal policy in this regard must be adopted, I find that before fixation of the brand rates, no hearing has been granted, while the appellant's plea is that there was sufficient cause for delay. In view of this, the impugned order of the Commissioner conveyed through the letters of the Dy. Commissioner (Tech.) being not sustainable, is set aside and the matter is remanded to the Commissioner for de novo decision on the appellant's applications for fixing of brand rate after granting them personal hearing and for considering their plea for condonation of delay, in the light of the Board's Circular No.13/2010 dated 24.06.10. The appeals stand disposed of as above.

(Rakesh Kumar)
Member (Technical)

Ckp.