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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. ST/1641/2010 – SM[BR] Date **17/02/2011**

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

To :
M/S DIMEX GRANITES PVT. LTD.
(A 100% E.O.U.) B-74, M.I.A., ALWAR (RAJ.)

M/S DIMEX GRANITES PVT. LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No. 128 / 2011 –SM[BR]** dated 8.2.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.
2. Adv. / Consult
MR.M.M.GUPTA ADVOCATE (JAIPUR)
A-13, GAYATRI NAGAR, SODALA,
JAIPUR-302006 (RAJ.)

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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III
Service Tax Appeal No. 1641 of 2010 (SM)

[Arising out of the Order-in-Appeal No. 297 (DKV) ST/JPR-I/2010 dated 11/08/2010 passed by The Commissioner (Appeals), Customs & Central Excise, Jaipur.]

For Approval and signature :
Hon'ble Shri 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 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 Department Authorities?	:

M/s Dimex Granites Pvt. Ltd. Appellant

Versus

CCE, Jaipur Respondent

Appearance

None – for the appellant.

Shri Anil Khanna, Authorized Representative (SDR) – for the respondent.

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

DATE OF HEARING : 08/02/2011.

Final Order No. 128/2011-SM (Br) Dated : __________

Per. Rakesh Kumar :-

This is an appeal against order-in-appeal No. 297 (DKV) ST/JPR-I/2010 dated 11/08/2010 passed by CCE (Appeals). The Commissioner in this case had dismissed the appeal as time barred having been filed after the period of six months from the date of the receipt of the impugned order. Though notice for hearing had been sent to the appellant, the appellant have sent written submissions and have requested for decision of this matter on merit.

2. Heard Shri Anil Khanna, the learned Departmental Representative, who pleaded that in this case there is no dispute that the order passed by the original Adjudicating Authority had been received by the appellant on 7/8/09 but they filed the appeal to the Commissioner (Appeals) on 8/2/2010 i.e. after period of six months from the date of the

receipt of the impugned order, that Commissioner (Appeals) cannot condone delay beyond the period of 30 days, that in view of this, the Commissioner (Appeals) has rightly dismissed the appeal as time barred, that Hon'ble Supreme Court in the case of **Singh Enterprises vs. CCE, Jahshedpur** reported in **2008 (221) E.L.T. 163 (S.C.)** has held that the Commissioner (Appeals) cannot condone the delay beyond the period of 30 days and in view of this, there is no infirmity in the impugned order.

3. I have gone through the written submissions of the appellant, wherein they have not disputed that though the order passed by the original Adjudicating Authority had been received by them on 7/8/09 and they were required to file the appeal by 7/11/09, they actually filed the appeal only on 8/2/2010. Since under the provisions of Section 35 of the Central Excise Act, 1944, the Commissioner (Appeals) cannot condone the delay of more than 30 days in filing of the appeal and this has been upheld by Hon'ble Supreme Court in the case of **Singh Enterprises vs. CCE , Jamshedpur** (supra), I

do not find any infirmity in the impugned order. The appeal is, therefore, dismissed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK