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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/1108 - 1109/2011 – SM[BR] E / STAY / 1379 – 1380 /2011 **Date** **30/08/2011**

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

To :
1. **M/S JG SPONGE & POWER PVT. LTD.**
2. **SHRI KARAN JUNEJA, DIRECTOR,**

BN-37 TO BN-42, CN-91 TO 100, MUSSORI GULAOTHI
ROAD HAPUR, DISTT. GHAZIABAD. (U.P.)
M/S JG SPONGE & POWER PVT. LTD. Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No517-518/2011-SM[BR]&S/451-452/2011** dated 8.8.2011 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. MEERUT II
OPP. SAHEED PARK (NEAR
ASHOK KI LAT) DELHI ROAD,
MEERUT (UP)

2. Adv. / Consult
MR.RAJESH CHHIBBER
FA/9, NEW KAVI NAGAR, GHAZIABAD

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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Excise Stay Appn. No. E/S/1379 – 1380/11-SM in
Excise Appeal No.E/1108-1109/11-SM

[Arising out of Order-in-Appeal No.33-34/CE/M-II/2011 dated 21.02.2011 passed by the Commissioner (Appeal), Central Excise, Meerut-II].

M/s.JG Sponge & Power P. Ltd.
Karun Juneja ...Appellant

Vs.

CCE, Meerut-II ... Respondent

Present for the Appellant : Shri.Rajesh Chhibber, Advocate
Present for the Respondent:Ms.R.Jagdev, S.D.R.

Coram: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Date of Hearing/Decision:08.08.2011

Final **ORDER NO.** 517-518/2011 SM(BR) + **DATED:**______
S-451-452/2011 SM(BR)

PER: D.N.PANDA

Perusal of para 3.3 of the first appellate order throws light that ld. Appellate Authority has not considered the provision of law relating to condonation of delay and counting of limitation as well as causes of delay. When the appellant received the adjudication order on 4.11.10, 60 days period expires on 3rd Jan., 2011. The discretionary period of 30 days expires by 2nd Feb., 2011. What that was true impression of the appellant that is immaterial to law because law has to operate its own field and What that is relevant in the present case is to consider reason of delay and not the length of delay following decision of the Apex Court in the case of N. Balkrishnan vs. M.Krishnamurthy reported in 2008 (228) ELT 162 (S.C.).

2. Above observation calls for remitting the matter back to the appellate authority below to grant fair opportunity of hearing to the appellant to decide on the issue of limitation carefully looking to the provisions of law as well as reasons of delay. It may be stated that meritorious appeal should not be thrown at threshold if reasons of delay subject to limitation provision appeals to the appellate authority to do justice to the appellant admitting the appeal. The appellant deserves fair hearing on limitation by him. Reason being the soul of justice, that should be depicted in the order.

3. Accordingly, the matter is remitted back to the appellate authority below to grant fair opportunity of hearing both on limitation and merit if the appellant succeeds on limitation to hear on merits. In view of the aforesaid observation, the stay applications filed in both the appeals are also disposed dispensing pre-deposit to grant opportunity of fair hearing before the Authority aforesaid. Consequently, both stay applications and appeals are disposed in the manner indicated above.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita