TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Date 12/09/2011

Appeal No. **E/788 /2011 – SM[BR] &E/ STAY /957 / 2011-SM[BR]**

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

To :
M/S ADITYA FLEXIPACK,
22-B-1, DADA NAGAR, KANPUR (U.P.) — Appellant
M/S ADITYA FLEXIPACK,

Vs

Respondent

C.C.E. KANPUR

I am directed to transmit herewith a certified copy of **Final order No.592/2011-SM[BR]&S/519/2011** dated 2.9.2011 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. KANPUR
117/7, SARVODAYA NAGAR,
KANPUR 208005.

2. Adv. / Consult
MR.AMIT AWASTHI
H-1, IST FLOOR, RADHEY APPARTMENT PLOT NO. 7/116A, SWAROOP NAGAR,
KANPUR-208002

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. 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 Registra
(SM Appeal Branch

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

Date of hearing/decision 02.09.2011

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member Judicial

1.	Whether Press Reporters 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 the 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

Excise Appeal No. 788 of 2011-SM with
Excise Stay Application No. 957 of 2011-SM

(Arising out of order-in-appeal No. 576-CE/APPL/KNP/2010 dated 19.11.2010 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Kanpur].

M/s Aditya Flexipack — Appellants

Vs.

CCE, Kanpur — Respondent

Appearance: Rep. by Sh. A.K. Dixit, Advocate for the appellants.
Rep. by Sh. S.K. Bhaskar, DR for the respondent.

Coram: Hon'ble Sh. D.N. Panda, Judicial Member

Final ORAL ORDER NO. 592/2011 SM (BR)
S-519/2011 SM (BR)

Per: Shri D. N. Panda:

The first appeal was dismissed being filed beyond the period of limitation. The reasoning given by the learned appellate authority that he has no power to condone the delay of 28 days is in accordance with law since the Order-in-Appeal was received by the appellant on 15.06.2010 while the appeal was filed on 23.09.2010. The due date of filing the appeal was by 14.08.2010 which was the last date for expiry of limitation. Had the appeal been filed within another thirty days period and latest by 14.09.2010 the authority had discretion to consider the same. Once the discretionary power ceases to be exercised, dismissal arises for which, the Appellate Authority has dismissed the appeal. Therefore, the present appeal is not maintainable for which that is liable to be dismissed. Stay application has become infractuous. That is ordered accordingly consequently.

[D.N. Panda]
Judicial Member

Pant