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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/521 /2011 – SM[BR] ST / STAY /1002 / 2011-SM[BR] **Date** **18/10/2011**

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

To :
M/S MODERN INSULATORS LTD.,
ABU ROAD, (RAJASTHAN)

M/S MODERN INSULATORS LTD., Appellant
Vs
C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No. 710/2011-SM[BR]&S/623/2011** dated 26.9.2011 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 II
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.K K ANAND, ADVOCATE
A-103, DEFENCE COLONY, NEW DELHI-110024

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)

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

ST/Stay/1002/10 in Appeal No.ST/521/11

(Arising out of Order-in-Appeal No.445(CB)/CE/JPR-II/2010 dt.10.1.2011 passed by the CCE(A), Jaipur)

Date of Hearing/Decision: 26.09.2011

For approval and signature:
Hon'ble Mrs.Archana Wadhwa, 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?	No
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
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

M/s.Modern Insulators Ltd. Appellant

Vs.

CST, Jaipur Respondent

Present for the Appellant: Shri Saurabh Yadav, Representative
Present for the Respondent: Shri Anil Khanna, SDR

Coram: Hon'ble Mrs.Archana Wadhwa, Member (Judicial)

Final **ORDER NO.** 710/2011 SM (BR) & S-623/2011 SM (BR)

PER: ARCHANA WADHWA

After dispensing with the conditions of pre-deposit of service tax of Rs.1,60,680/- and identical amount of penalty imposed upon the applicant, I proceed to decide the appeal itself, inasmuch as I find that the Commissioner (Appeals) has rejected the appeal on the issue of time-bar.

2. It is seen that the issue involved is of denial of cenvat credit of service tax paid on input service. The period for filing the appeal in terms of provision of section 85 of Finance Act, 1994 is three months whereas the period for filing the appeal under Central Excise Act under section 35 is 60 days. By treating the appeal as relatable to service tax act, the period for filing the appeal would be ~~is the same~~ three months. I find that the Commissioner (Appeals) has observed that they should have filed the appeal under section 35 which provided a period of 60 days. As such by observing that the appeal is delayed by 27 days. He rejected the appeal as time barred.

3. Learned Advocate appearing for the appellants submits that even if the appeal is relating to section 35, the delay in filing the appeal is within condonable period and the Commissioner (Appeals) should have condoned the same.

4. In view of the above, I agree with the learned Advocate and I condone the delay as ~~and~~ the issue is not free from doubt and remand the matter to the Commissioner (Appeals) to decide the same on merits. The stay petition as also the appeal gets disposed of in the above terms.

(Pronounced in the open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

MK