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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/4100/2010 – SM[BR] E / STAY/ 3987/2010-SM[BR] **Date 19/10/2011**

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

To :
M/S KURELE PAPERS MILLS PVT.,
REGD. OFF 113/2/127, SWAROOP NAGAR, KANPUR.

M/S KURELE PAPERS MILLS PVT., Appellant

Vs

C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.716/2011-SM[BR]&S/627/2011** dated 23.9.2011 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 SHRI SAURABH YADAV ADV.
   A-103,DEFENCE COLONY NEW DELHI-24.

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 (Harvana)
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.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 23.09.2011

For approval and signature:

Hon'ble Sh. 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 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?	

Excise Appeal No. 4100 of 2010 with Excise Stay No. 3987 of 2010

(Arising out of order-in-appeal No. 474/ST/APPL/KNP/2010 dated 20.09.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur).

M/s Kurele Paper Mills Pvt. Limited — Appellants

Vs.

CCE, Kanpur — Respondent

Appearance:

Rep. by Sh. Saurabh Yadav, Advocate for the appellants.
Rep. by Mrs. R. Jagdev, DR for the respondent.

Coram: Hon'ble Sh. Rakesh Kumar, Member (Technical)

Final ORDER NO. 716/2011 SM(BR) &
S - 627/2011 SM(BR)

Per: Rakesh Kumar:

Heard both sides. Though today, this matter was listed for hearing of stay application, after hearing both sides, I am of the view that the appeal itself can be disposed of. Accordingly, with the consent of both the sides, the appeal was heard for final disposal after waiving the pre-deposit.

2. In this case, as is clear from the perusal of the impugned order dated 20.09.2010 passed by the Commissioner (Appeals), the Commissioner (Appeals) has dismissed the appeal on the ground of time bar, as while the order-in-original passed by the original adjudicating authority was received by the appellant on 5.10.2009, the appeal was filed before the Commissioner (Appeals) on 29.03.2010 and thus there was delay of three months and six days in filing of the appeal in terms of Section 35 of the Central Excise Act, 1944 while the Commissioner (Appeals) could condone the delay only upto thirty days and beyond thirty days the Commissioner (Appeals) has no power to condone the delay. The Hon'ble Supreme Court in the case of **Singh Enterprises vs. Commissioner of C. Excise, Jamshedpur** reported in 2008 (221) ELT 163 (SC) has held that under Section 35 of the Act the Commissioner (Appeals) cannot condone the delay in filing of appeal beyond a period of 30 days. In view of this, this appeal has to be dismissed. The appeal alongwith stay application is, therefore, dismissed.

(Rakesh Kumar)
Member (Technical)

Pant