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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/1283/2011 – SM [BR] E / STAY / 1656 / 2011-SM[BR] **Date 02/11/2011**

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

To :
M/S RAJ PRODUCTS,
A-5, TRANSPORT NAGAR, LUCKNOW (U.P.)

M/S RAJ PRODUCTS, Appellant
Vs
C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No.741/2011-SM[BR]&S/685/2011** dated 12.10.2011 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. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult
MR. 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 (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. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III
Excise Stay Application No. 1656 of 2011 in Appeal No. 1283 of 2011 (SM)

[Arising out of the Order-in-Appeal No. 491-492/CE/LKO/2010 dated 30/12/2010 passed by The Commissioner (Appeals), Customs & Central Excise, Lucknow.]

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 Raj Products — Appellant

Versus

CCE, Lucknow — Respondent

Appearance

Shri Saurabh Yadav, Advocate – for the appellant.

Shri B.L. Soni, Authorized Representative (DR) – for the respondent.

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

DATE OF HEARING : 12/10/2011.

Final Order No. 741/2011 SM (Br) + S-685/2011 SM (Br) Dated : ____________

Per. Rakesh Kumar :-

Heard both the sides.

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

3. I have carefully considered the submissions from both the sides and perused the records.

4. In this case, the order-in-original passed by the original Adjudicating Authority had been received by the Commissioner (Appeals) on 5/5/2010 and the appeal had been filed before the Commissioner (Appeals) on 06/8/10 and as

such, there was delay of 33 days delay in filing of the appeal while in terms of the provisions of Section 35 of the Central Excise Act, the Commissioner (Appeals) can condone the delay of only 30 days. The commissioner (Appeals), therefore, has dismissed this appeal on the ground of time bar without going into the merits of this case. I find that on the issue as to whether the Commissioner (Appeals) can condone the delay in filing of the appeals beyond 30 days, stands decided in favour of the Revenue by the judgment of Hon'ble Supreme Court in the case of **Singh Enterprises vs. CCE, Jamshedpur** reported in **2008 (221) E.L.T. 163 (S.C.)** wherein it has been held that the Commissioner (Appeals) has no power for condoning the delay beyond 30 days. In view of this, there is no merit in this appeal. The same is dismissed. The stay application also stands disposed of.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK