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

Date 12/05/2010

Appeal No. E/2700/2009 - EX[DB]
E/S/2778/09-EX

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

To :
M/S LOGIC POLY PRODUCTS,
SURVEY NO. 314/3, SDA COMPOUND LASUDIA
MORI, DEWAS NAKA, INDORE. (M.P.)

M/S LOGIC POLY PRODUCTS, Appellant
Vs
C.C.E. INDORE Respondent

STAY ORDER NO.348/2010-EX

I am directed to transmit herewith a certified copy of **Final order No.** 329/ **2010 EX[DB]** dated 05-5-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   C.C.E. INDORE
   MANIK BAGH PALACE, POST BOX NO. 10, INDORE 452001 (M.P.)
2. Adv. / Consult
   MR.RAMESH NAIR
   LAKSHMI VIHAR, AG- 192, SCHEME NO. 54, VIJAYNAGAR, INDORE(MP)
3. C.D.R
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10. Taxmann Allied Service Pvt Ltd.,/59/32, New Rohtak Road, New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13. Office Copy
14. Guard file
15. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

16. Tax India Online.Com (P) Ltd.
    Unit No.1, 2nd Floor, Vasant Aracade, Nelson Mandela Road,
    Vasant Kunj, New Delhi-70

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

Date of hearing/decision: 05.05.2010

Excise Stay No. 2778 of 2008 in Excise Appeal No. 2700 of 2009

M/s Logic Poly Products — Appellant

Vs.

CCE, Indore — Respondent

Appearance: Rep. by Sh. Ramesh Nair, Advocate
Rep. by Sh. R.K. Verma, DR for the respondent.

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President
Hon'ble Sh. Rakesh Kumar, Member (Technical)

STAY Oral order No. 348 / 10-EX

Per: Shri Justice R.M.S. Khandeparkar:

As we have heard the learned Advocate for the appellants and learned DR for the respondent at length, we propose to dispose of the appeal itself and hence this application is allowed and disposed of.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

/Pant/

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

Date of hearing/decision: 05.05.2010

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
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.	Yes
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

Excise Appeal No. 2700 of 2009 with Excise Stay No. 2778 of 2009
[Arising out of Order-in-Appeal No. IND-I/142/2009 dated 21.07.2009 passed by the Commissioner (Appeals) Customs & Central Excise, Indore].

M/s Logic Poly Products — Appellants

Vs.

CCE, Indore — Respondent

Appearance: Rep. by Sh. Ramesh Nair, Advocate for the appellants.
Rep. by Sh. R.K. Verma, DR for the respondent.

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President
Hon'ble Sh. Rakesh Kumar, Member (Technical)

FINAL Oral order No. 329 / 10 – EX

Per: Shri Justice R.M.S. Khandeparkar:

The appellants challenge the order dated 21.07.2009 passed by the Commissioner (Appeals) Indore, whereby the appeal filed by the appellants was dismissed on the ground of bar of limitation. The Commissioner (Appeals) has held that the original order passed on 26.03.2008, while the appeal was filed on 17.04.2009 i.e. about 387 days after passing of the order. On that ground alone, the appeal has been dismissed.

2. It is the case of the appellants that the copy of the order of the adjudicating authority was received by the appellants on 30.01.2009 and considering the same there was a delay of only 18 days.

3. The appellants are engaged in the manufacture of goods classifiable under Chapter heading 3923 of the schedule to the Central Excise Tariff Act, 1985. The appellants were availing exemption benefit under the Notification No. 8/2003-CE dated 01.03.2003. In view of the investigation carried out by the Department which disclose that the appellants had crossed turnover of Rs. 1 crore for the year 2005-06. A show cause notice dated 22.08.2006 came to be issued to the appellants. The proceedings initiated pursuant to the said show cause notice were contested by the appellants. The same came to be disposed of by the order dated 26.03.2008, whereby the duty liability to the tune of Rs. 15,75,198/- was confirmed against the appellants while imposing penalty of equal amount and payment of interest besides ordering confiscation of the seized goods worth Rs. 1,03,032/- with an option to redeem the same on payment of penalty Rs. 5,000/-. The appellants had already paid the duty amount by 29.03.2006 which was appropriated under the said order itself alongwith sum of Rs. 21,116/- paid towards interest due and payable on the said amount of duty.

4. It is the case of the appellants that the copy of the said order was never communicated to the appellants and appellants came to know about the said order only upon receipt of the notice dated 30.01.2009 requiring the appellants to deposit the penalty amount and the redemption fine in terms of

the said order. It was pursuant to the receipt of the said notice alongwith copy of the order that the appellants prepared the appeal and filed the same before the Commissioner (Appeals), however, in the process there was a delay of 18 days. The Commissioner (Appeals), however, ignoring this aspect of the matter and merely holding that the order is dated 26.03.2008 whereas the appeal was filed on 17.04.2009, that there was a delay of 387 days, dismissed the appeal.

5. Placing reliance in the decision of the Larger Bench of the Tribunal in the matter of **Margra Industries Ltd.,** vs. **Commissioner of Customs, New Delhi** reported in 2006 (202) ELT 244 (Tri.-LB), learned Advocate for the appellants submitted that mere dispatch of the copy of the order either by speed post or registered post by itself is not a proof of communication of such order within the meaning of the said expression under Section 37C of the Central Excise Act, 1944.

6. Learned DR for the respondent on the other hand, drawing our attention to the copies of outward register and the registered in relation to the copies dispatched under speed post as also copy of the letter dated 30.01.2009 by the appellants addressed to the Superintendent, Indore submitted that the records apparently disclose that the copy of the order passed by the adjudicating authority was duly dispatched to the appellants and, therefore, there is a presumption in favour of receipt of such copy of the order which was sent to the appellants under speed post and in that regard he sought to draw our attention to the order passed by the Division Bench of the Tribunal in the matter of **S.A. Plywood Industries** vs. **Commissioner of C.Ex. Siliguri** reported in 2008 (230) ELT 329 (Tri. –Kolkata).

7. The Larger Bench in **Margra Industries** case had held that the despatch of adjudication order by speed post/ registered post would not amount to a valid service when proof of actual delivery of speed post and further that provisions of law comprised under Section 37C of the Central Excise Act indicate that there cannot be simultaneous affixing of the order on the notice board and the affixation of the order has to be considered after failure of the first two modes of the service prescribed under the said provision of law. The Division Bench of the Tribunal in **S.A. Plywood Industries** case while considering the said decision of the Larger Bench observed that the issues for consideration before the Larger Bench were that whether despatch of the adjudication order by speed post amounts to a valid service under Section 153(a) of the Customs Act, 1962 in the absence of proof of actual delivery of the speed post and whether simultaneous affixation of the order on the notice board while despatching the same by speed post would amount to sufficient compliance of Section 153(b) of the Customs Act and that in the absence of proof of actual delivery by speed post the Tribunal had concluded that there was no valid service, with that observation it was held that in **S.A. Plywood Industries** case the acknowledgement produced by the Revenue proved that the order of the adjudication was sent by Speed Post and the order was therefore deemed to have been served in terms of sub-section (2) of Section 37C of the said Act, and in that context the decision of the Larger Bench was not of any help to the assessee in the case of **S.A. Plywood Industries.**

8. As far as the case in hand is concerned, undoubtedly the entries in the dispatch register under serial No. 11402 dated 24.04.2008 refers to a communication sent to the appellants. However, the communication bears

"No. V(39)15-05/06/ADJ.-II" whereas the order dated 26.03.2008 bears No. "48/JC/CEX/IND/07-08". It is not the case of the Department that the copy of the order which is stated to have been dispatched to the appellants on 24.4.2008 was accompanied by forwarding letter bearing number disclosed against entry number 11402 of the said register. It is, however, contended on behalf of the respondent that the number which is disclosed relates to the file and not to any forwarding letter and that is apparent from the column heading in the register read with the file number relating to the case in hand which is found recorded even at the end of the order in question itself. Undoubtedly, the same tallies with the number found in the register and compared with the file number recorded in the record. Considering the said records alongwith letter dated 30.01.2009 by the appellants addressed to the Superintendent wherein it was the case of the appellants that the copy of the order was not readily available with them and that therefore they wanted additional copy, clearly goes to show that the Department had in fact despatched the copy of the order and the same was received by the appellants. However, the same was not traceable to the appellants and that therefore, they had requested for another copy of the order.

9. The facts on record therefore disclose that though the copy was received by the appellants, the same was misplaced and it was not traceable. In those circumstances, the appellants could lay their hands on the copy of the order only on 30.01.2009. Undoubtedly, within ninety days from the said date i.e. from the day the appellants could lay their hands on the copy, they preferred the appeal. Simultaneously, it is also to be noted that the appellants had already paid the entire duty amount and the interest payable thereon to the Department by 29.03.2006, much prior to the disposal of the

matter by the adjudicating authority. It is also undisputed fact that they had also paid 25% of the total penalty amount leviable based on the duty liability.

10. In the facts and circumstances of the case, it is necessary to consider the applicability of the provisions of the first proviso to Section 11AC to the said Act while dealing with the matter relating to the penalty amount and the requirement of consideration of the appeal on merits in view of the said provision of law.

11. Apparently, the impugned order nowhere discloses consideration of the matter on merits and the same has been dismissed merely on the bar of limitation. In the facts and circumstances of the case, therefore, in our considered opinion, the appellants had disclosed sufficient cause for condonation of delay in the matter and hence the impugned order on this ground itself cannot be sustained and is liable to be set aside and the matter need to be remanded to the Commissioner (Appeals) to consider the same on merits. Accordingly, the appeal is allowed and the impugned order is set aside. The matter is remanded to the Commissioner (Appeals) to decide the appeal on merits.

12. The appeal is accordingly disposed of in above terms.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

/Pant/