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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/2355/2009-2358/2009 – SM [BR] & E/ CO / 168 – 171 / 2009 –SM[BR] Date 25/03/2010

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

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.
C.C.E. JAIPUR I — Appellant

Vs

SH. A.K.GOEL, SR. G.M M/S INDO ALUSYS INDUSTRIES LTD. — Respondent

am directed to transmit herewith a certified copy of **Final order No**.344 – 347 / 2010-SM[BR]& M/ 70-73/2010 dated 17.3.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   SH. A.K.GOEL, SR. G.M M/S INDO ALUSYS INDUSTRIES LTD.
   (FORMERLY KNOWN AS M/S MAHAVIR ALUMINUM LTD.)
   SP-2/333, RIICO INDUSTRIAL AREA, BHIWADI (RAJASTHAN)
2. Adv. / Consult SHRI BIPIN GARG ADV.
   B-1/1289-A, VASANT KUNJ NEW DELHI

3 S.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 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

2. SH. DINESH KUMAR BATRA, EXCISE OFFICER, OF
   M/S INDO ALUSYS INDUSTRIES LTD. (FORMERLY KNOWN AS
   M/S MAHAVIR ALUMINUM LTD.), SP-2/333, RIICO INDU

3. SH. M.S.SUBRAMANIAN, DY. G.M. OF
   M/S INDO ALUSYS INDUSTRIES LTD. (FORMERLY KNOWN AS
   M/S MAHAVIR ALUMINUM LTD.), SP-2/333, RIICO INDU

4. SH. PRADEEP JAIN, M.D. OF
   M/S INDO ALUSYS INDUSTRIES LTD. (FORMERLY KNOWN AS
   M/S MAHAVIR ALUMINUM LTD.) SP-2/333, RIICO INDUS

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Condonation of Delay No. 168-171 of 2009-SM &
Excise Appeal No. 2355-2358 of 2009-SM

(Arising out of Order-in-Appeal No. 32-36(GRM)/CE/JPR-I/2007 dated 20.2.2007 passed by the Commissioner (Appeals), Central Excise, Jaipur-I)

CCE, Jaipur — Appellant

Vs.

1. Shri A.K. Goel, GM
   M/s Indo Alusys Inds. Ltd. — Respondents
2. Shri Pradeep Jain, M.D.
3. Shri M.S. Subramanian, Dy. G.M.
4. Shri Dinesh Kumar Batra, Excise Officer

Appearance:

Appeared for Appellant : Shri S. Gautam, SDR

Appeared for Respondent: Shri Bipin Garg, Advocate

Date of Hearing: 26.2.2010

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Final Order No. 344-347/2010 SM (Br) & ....dated............
Misc Order No- 70-73/2010 SM (Br)

Per D.N. Panda :

All these four appeals emanated from order in Appeal No. 32-36 (GRM)/CE/JPR-I/07 dated 20th Feb. 2007 passed by learned Commissioner (Appeals). These appeals were filed on 18.8.09 and that was five months after disposal of Appeal No. 1142/07 in the case of CCE, Jaipur-I Vs. M/s Indo Alusys Industries Ltd. by Final Order No. 274/2009-SM(BR) dated 17.3.2009. M/s Indo Alusys

Industries Ltd. was also an appellant before ld. Commissioner (Appeals) in the above common order in appeal, when Revenue came in appeal against the Respondent M/s Indo Alusys Industries Ltd. in Appeal Case No. E/1142/2007-SM(BR) to Tribunal. While dismissing the appeal by order dated 17.3.2009, there was an observation made in para-3 of the order (which shall be read as para-8 instead of para-3) that Revenue has preferred only one appeal against M/s Indo Alusys Industries Ltd. while the order of adjudication related to five litigants by a common order. It was also observed that ld. Commissioner had dealt all the litigants by his common order in appeal. In absence of separate appeals in respect of the personal penalties on four other litigants the appeal filed by Revenue against M/s Indo Alusys Industries Ltd. has only received attention of the Bench. Such a clear observation was mis-conceived in the present Misc. application for condonation of delay filed by Revenue. In para-3 of the application, Revenue misconceived that Tribunal had held that Department has preferred common appeal in respect of five litigants. With this averment prayer of Revenue was that they deserved condonation of delay when they have now filed four appeals against the four litigants who were before the ld. Appellate authority below. All these four appeals have been filed on 18.8.09 i.e five months after disposal of Revenue's appeal against M/s Indo Alusys Industries Ltd.

2. Ld. DR Shri Gautam appearing on behalf of Revenue submits that Revenue having been aggrieved by the order dated 17.3.09 passed by Tribunal in the case of M/s Indo Alusys Industries Ltd. has approached the Hon'ble High Court of Rajasthan. Accordingly,

filing of four appeals against others was considered proper by Revenue. There is no dispute that the order in appeal was communicated to the appropriate authority on 20th Feb. 2007.

3. Opposing the appeals and applications of Revenue, ld. Counsel Shri Bipin Garg submits that when Revenue did not come up to show to the Bench about pendency of any appeal of the present four Respondents, the Bench had appropriately observed in para-3 that Revenue had preferred only one appeal. Tribunal had not at all made any observation that common appeal was filed by Revenue. Therefore such a mis-conception itself is enough a ground for dismissing the application for condonation of delay as well as appeals of Revenue when the order in appeal was received on 20th Feb. 2007 by Revenue and remedy of appeal has already been lost by Revenue after 20th May 2007. Secondly, once a principal appeal has been disposed and it was well known to Revenue that there was no appeal they had filed even as on 17.3.09, the present four appeals as well as Misc. applications are abuse of the process of law. Accordingly, remedy sought by Revenue should be denied.

4. Heard both sides and perused the record.

5. There is no dispute that Revenue had received the order in appeal in all five cases on 20th Feb. 2007. It lost its remedy of appeal after expiry of statutory period of three months before Tribunal. Revenue only preferred appeal against M/s Indo Alusys Industries Ltd. who was also a common appellant before the ld.

Commissioner (Appeals) along with four respondents today before him in Appeal Nos. 32-36/GRM/CE/JPR-I/07 dated 20.2.2007. Appeal of Revenue against above single Respondent was disposed by the Tribunal vide Final Order No. 274/09-SM (BR) dated 17.3.2009 with a clear observation of no pendency of any other appeal of Revenue pending on that day in terms of para 3 of the order.

6. The Misc. application filed for condonation of delay does not show how many days of delay has been made in seeking remedy of appeal on 18.8.09 and no cogent reason of delay is patent from application. A casual application was made by Revenue pleading that it has a strong case mis-conceiving that there was a common appeal filed by Revenue earlier in terms of para-3 of the application. In order of remove difficulties and also ambiguity, enquiry was made on 17.3.09 itself about the status of appeals of Revenue, if any, against other four respondents who are before Tribunal today. Ld. DR appearing on that day had no information to guide the Bench. Therefore to meet the end of justice, categorical observation was made in para-3 of appeal order. That having been misconstrued by para-3 of the Misc. application of Revenue and the application being without disclosing the reason of delay, that does not deserve any consideration being devoid of merit. Accordingly, all the four applications are dismissed so also the appeals get dismissed.

7. While concluding of dictation of this order, ld. Counsel pointed out that there is a typographical error in the aforesaid order dated 17.3.09 of Tribunal in page-4 of that order. He rightly suggests

that paragraph-8 numbered as "3" at that page after paragraph-7 may be rectified to be read as para-"8". This suggestion being proper to rectify the mistake, it is ordered that the paragraph reading as "3" appearing after para-7 in page 4 of order dated 17.3.09 shall be read as para-"8".

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

RM