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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

Appeal No. E/2517/2008 - EX[DB] WITH E/S/2524/08 & E/COD/2010-EX

Date 20/07/2010

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

To :
C.C.E. JAMMU
OB-32, RAIL HEAD COMPLEX, JAMMU - 180012.

C.C.E. JAMMU — Appellant
Vs
M/S EMCO WIRES AND CABLES — Respondent

STAY ORDER NO.487/2010-EX
MISC ORDER NO.408/2010-EX

I am directed to transmit herewith a certified copy of **Final order No.** 457/ **2010 EX[DB]** dated 10-5-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   M/S EMCO WIRES AND CABLES
   106, PHASE-III, INDUSTRIAL EXTENSION AREA,
   GANGYAL. JAMMU.
2. Adv. / Consult SH. A.S. GILL, ADV.,
   # 3355, 21-D, CHANDIGARH-22

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 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file
16. HON'BLE PRESIDENT.
17. The chairman of Board.

Assistant Registrar
(Excise 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. I

DATE OF HEARING : 10/05/2010.
DATE OF DECISION : 10/05/2010.

Excise Appeal No. 2517 of 2008 with Stay Application No. 2524 of 2008

[Arising out of the Order-in-Appeal No. 407/CE/Appl/Jal/2007 dated 07/01/2008 passed by The Commissioner (Appeals), Central Excise, Jammu.]

For Approval and signature :

Hon'ble 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 would 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 Department Authorities? : Yes

CCE, Jammu — Appellants

Versus

M/s Emco Wires & Cables — Respondent

Appearance

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

Shri A.S. Gill, Advocate – for the Respondent.

CORAM : **Hon'ble Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

STAY Order No. 487/10-Ex Dated : ______________

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

In view of order passed today in COD application No. E/COD/12 of 2010, appeal and the stay application do not survive and stand dismissed.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK

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. I

DATE OF HEARING : 10/05/2010.
DATE OF DECISION : 10/05/2010.

Excise COD Application No. 12 of 2010 in Appeal No. 2517 of 2008

[Arising out of the Order-in-Appeal No. 407/CE/Appl/Jal/2007 dated 07/01/2008 passed by The Commissioner (Appeals), Central Excise, Jammu.]

For Approval and signature :

Hon'ble 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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: Yes
3.	Whether their Lordships wish to see the fair copy of the order?	: Seen
4.	Whether order is to be circulated to the Department Authorities?	: Yes

CCE, Jammu — Appellants

Versus

M/s Emco Wires & Cables — Respondents

Appearance

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

Shri A.S. Gill, Advocate – for the Respondent.

CORAM : **Hon'ble Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No. 457/10-EX Dated : ____________
MISC order No. 408/10-EX

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

Heard the learned DR for the applicant and learned advocate for the respondents. This is an application whereby the department without clearly admitting that there was a delay in filing the appeal, seeks indulgence of the Tribunal for condonation of delay in filing the same.

2. An order-in-appeal came to be passed by the Commissioner (Appeals), Jalandhar on 7th January 2008 in a matter where the same related to the claim of refund by the assessee. The assessee thereupon filed an application for necessary refund order and for that purpose approached Deputy Commissioner of the concerned area. As nothing was heard by the assessee in that regard, another application was filed on 6th May 2008 alongwith a copy of the order dated 7th January 2008. It is, however, the case of the Department that the official copy of the said order was received only on 18th August 2008 and that thereafter the department moved for necessary review order in terms of Section 35E of the Central Excise Act, 1944, which was passed by the Competent Authority on 14th November 2008 and thereafter the appeal was filed on 17th November 2008.

3. The learned representative of the Department submits that considering the fact that the official copy was received on 18th

August 2008 and the appeal was filed on 17th November 2008 there was in fact no delay, however, if it is assumed that the copy of the order was made available to the Department on 6th May 2008 pursuant to the application in that regard being filed by the assessee in the office of Deputy Commissioner of the concerned area, then there would be delay of three months and three days.

4. On the other hand, the learned advocate for the respondents drawing our attention to the letter dated 18th July 2008 by the Superintendent (Review) addressed to Superintendent (Appeals) submitted that the letter clearly refers to non-availability of the official copy of the order-in-appeal and not that it had no knowledge of the order-in-appeal. In fact, the letter clearly refers to the number of the order-in-appeal, as well as the date thereof. The same clearly reveals that the office of Superintendent (Review) was fully aware of the order in question and he could have taken necessary steps for review of the order in terms of Section 35E without waiting for official copy of the order.

5. To a pertinent question to the representative of the department, as to whether there is any specific provision of law which discloses that the authorities can move for necessary order in review under Section 35E only after receipt of the official copy of the order, the learned representative of the department fairly conceded that there is no such specific provision. He further submitted in order to have authenticity to the document in

relation to the order in order to act upon it, an official copy is insisted upon before taking action in terms of Section 35E. The learned advocate for the respondents, however, has also drawn our attention to Section 37C (2) of the said Act, which speaks of the modes of service of every decision or order passed under the Act. Sub-section (2) of Section 35C provides that every decision of order passed or any summons or notice issued under the said Act and the rules made therein shall be deemed to have been served on the day of which decisions or order, summons or notice is delivered by post or a copy thereof is affixed in the manner provided under sub-section (1) of Section 35C. Undoubtedly, therefore, once a copy of the order carrying specific number and date is provided to the office of Deputy Commissioner and the Superintendent (Review) is able to lay his hands on such copy it would be presumed that the concerned office had sufficient knowledge of the said order and to that extent, there was compliance of sub-section (2) of Section 37C of the said Act. Obviously, therefore, the period of limitation for filing the appeal for the department would commence from the date of knowledge about the said order.

6. Undoubtedly from the letter dated 18th July 2008 it is not known as to when such copy came in possession of the office of Superintendent (Review). But, certainly it can be said that the same must be pursuant to the copy of the order being made available to the office by the respondents, latest by 6th of May 2008.

7. When the matter in stay application in relation to the No. E/S/2524 of 2008 came up for hearing on 27th March 2009 after hearing the parties and in view of specific objection raised by the learned advocate for the respondents following order came to be passed :

> "Dr. A.S. Gill, learned Counsel for the Respondent has preliminary objection that Revenue's appeal is barred by limitation. To this submission, learned DR Shri S.N. Srivastava fairly states that he shall examine the record and if an application for condonation of delay is required, Revenue shall prefer to file that application for consideration of the Bench. Ld. DR therefore, prays eight weeks time to make such application. If revenue prefers to file an application, Registry is directed to serve a copy thereof on the Respondent at the address available on the Appeal Memo. To serve above purpose, we allow eight weeks time to revenue to make appropriate application, if they are so advised by their authorities.
>
> 2. We make it clear to Revenue that the delay condonation application is required to be verified by an affidavit. Registry is directed to list this matter on first week of July i.e. **1st July 2009**. Both sides take notice."

8. Apparently, it was made clear to the department that every delay condonation application is required to be properly verified and should be supported by an affidavit.

9. When the matter thereafter came up for hearing on 1st July 2009 at the request in COD/66/09, on oral motion made by the learned representative by the department, the application was allowed to be withdrawn with liberty to file a proper application

and accordingly the present application came to be filed. However, it was not supported by proper affidavit and, therefore, when the matter came up for hearing on 5th March 2010 time was granted to file proper affidavit. Accordingly, an affidavit has been placed on record today by the Deputy Commissioner, Central Excise, Jammu.

10. Though, it is stated to be an affidavit, it is merely in the form of the comments with reference to paras of the affidavit dated 27th March 2010 filed by the respondents. It is pertinent to note that in spite of specific order by the Tribunal on 27th March 2009, that a delay condonation application is required to be supported by an affidavit, the so called affidavit filed today does not have verification clause.

11. Every statement in an affidavit needs to be made on oath. When such statements are required to be made on oath, it is necessary for the respondents to disclose the source of information based on which, the statements of facts are made in the affidavit. The source in that regard is required to be disclosed in the verification clause. Though, the provisions of code of civil procedure are not attracted to all such affidavits filed in the Tribunal, if one peruses order XIX of Code of Civil Procedure, it will ~~helps~~ help to understand the purpose for which the verification clause should be as well as the purpose behind such verification clause. It is apparent that whenever any statement of fact is required to be made in an affidavit, the deponent has to disclose the source of information based on which such statement is

made. It should be either his personal knowledge or knowledge derived from records maintained in his office or may be by way of information received from other persons or other sources. But the same should be clearly disclosed in the verification clause, otherwise the affidavit cannot be termed has complete in every respect. It is also necessary in order to ascertain the veracity of the information and to enable the party disputing such contents to make the deponent responsible for his statement and if necessary to summon him for cross examination.

12. The affidavit in question does not satisfy any of such requirements of a proper and lawful affidavit. That apart while on the one hand, the department claims to have acquired the official copy of the order on 18th August 2008, at the same time, the records disclose that the concerned officer of the department was already in possession of the copy of the order prior to 18th July 2008.

13. Condonation of delay is not a matter of right, it is a matter of discretion to be exercised by the authority before whom the parties are required to approach within the prescribed time and failing which are required to justify the delay with sufficient cause. Obviously, therefore, the discretion has to be exercised judiciously. For that purpose, the records must disclose sufficient cause for condonation of delay. When the records apparently reveal that the party approaching beyond the period of limitation had sufficient knowledge of the contents of the order which was necessary to frame the grounds of challenge to the order, it can

hardly be said that the party had disclosed sufficient cause for delay, more particularly in relation to the period from the date of knowledge of such contents of the order.

14. As rightly pointed out by the learned advocate for the respondents, the concerned officer who is fully aware of the contents of the order passed on 7th January 2008 released on 18th July 2008, and therefore, it cannot be said that he could be waiting for the copy till 18th August 2008 to take necessary steps in terms of Section 35E of the said Act. The contention about non-availability of the official copy also does not appeal to our mind. Firstly, there is no provision of law disclosed which would enable the concerned officer to wait for the official copy of the order. Secondly, the concerned officer being in possession of the copy of the order furnished by the assessee, he could have very well ascertained and verified as to whether the same is a true copy of the original order or not. Besides, having come to know about the order, efforts could have been made to obtain the official copy urgently. Nothing is disclosed as to what prevented the officer from taking steps in those regards.

15. It is pertinent to note that the claim involved in the matter is sum of Rs. 2,06,724/-. It is not to say that merely because an amount involved is not a huge amount for the department that we consider the matter differently. The records disclose total absence of due diligence on the part of the department persons to take appropriate steps in time. The law of limitation is same for the private parties as well as for the Government. We are

aware that in Government offices, many a times, on account of carefree attitude on the part of the Government officers, which is commonly known as "whose what's go?", the matters get delayed. Apart from carefree attitude, there could be various other reasons for the same also. However, when it comes to condonation of delay, the reasons should be justifiable reasons and shall be in relation to the sufficient cause for condonation of delay, and not otherwise.

16. In the case in hand, we do not find any sufficient cause having been made out for the delay in filing the appeal. What is surprising is that, the department does not want to admit that there is a delay and yet, expects the Tribunal to condone the delay if any. In such circumstances, the department cannot expect any sort of indulgence from the Tribunal.

17. For the reasons stated above, therefore, we do not find any substance in the application for condonation of delay and hence the same is liable to be dismissed for the absence of sufficient cause for delay in filing the appeal and the same is accordingly dismissed. The Registrar is directed to forward the copy of this order to The Chairman of the Board.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK

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. II

Excise Stay Application No. 2524 of 2008 in Appeal No. 2517 of 2008

CCE, Jammu — Appellant

Versus

M/s Emco Wires & Cable Industries — Respondent

Appearance

Shri S.N. Srivastava, Authorized Representative (DR) – for the appellant.

Shri A.S. Gill, Advocate – for the Respondent.

CORAM : **Hon'ble Shri D.N. Panda, Judicial Member**
Hon'ble Shri Rakesh Kumar, Technical Member

DATE OF HEARING : 27/03/2009.

Order No. ______________ Dated : ____________

ORDER

Per. D.N. Panda :-

Dr. A.S. Gill, learned Counsel for the Respondent has preliminary objection that Revenue's appeal is barred by limitation. To this submission, learned DR Shri S.N. Srivastava fairly states that he shall examine the record and if an application for condonation of delay is required, Revenue shall prefer to file that application for consideration of the Bench. Ld. DR therefore, prays eight weeks time to make such application. If revenue prefers to file an application, Registry is directed to serve a copy thereof on the Respondent at the address available on the Appeal Memo. To serve above purpose, we allow eight weeks time to revenue to make appropriate application, if they are so advised by their authorities.

2. We make it clear to Revenue that the delay condonation application is required to be verified by an affidavit. Registry is directed to list this matter on first week of July i.e. **1st July 2009**. Both sides take notice.

(Dictated and pronounced in open court)

13/4/09

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK

TELEGRAM : CEGCANAL

Website : www.cestat.gov.in

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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 : 03/07/2009

MISC Order No. 429/2009-EX

Application E/S/2524/2008 & E/COD/66/2009-EX

Appeal E/2517/2008 - EX[DB]

1. Appellant
   C.C.E. JAMMU
   OB-32, RAIL HEAD COMPLEX, JAMMU - 180012.
2. Respondent
   M/S EMCO WIRES AND CABLES
   106, PHASE-III, INDUSTRIAL EXTENSION AREA, GANGYAL, JAMMU.
3. Adv / Consult : SH. A. S. GILL, ADV., #3355, 21-D, CHANDIGARH
4. C.D.R
5. Bar Association, CESTAT, New Delhi.
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi - 110003
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2 (OLD No.36),Vaithyaram Street, T. Nagar, Chennai 600017
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, (U P)
11. Deeparchie Publications, M-93, Marg. 43, 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 (P) Ltd, Law House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard File
18. Second Folder

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise COD No. 66 of 2009 &
Excise Stay Application No. 2524 of 2008 in
Excise Appeal No. 2517 of 2008

DATE OF HEARING : 01.07.2009
DATE OF DECISION : 01.07.2009

CCE, Jammu .... **Applicant**
(Rep by Sh. P.K. Singh, DR)

VERSUS

M/s Emco Wires & Cables Indus. .... **Respondent**
(Rep. by NONE)

CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT
HON'BLE MR. M. VEERAIYAN, MEMBER (TECHNICAL)

misc **ORAL ORDER NO.** 429/09-EX

PER JUSTICE R.M.S. KHANDEPARKAR :

On oral motion made by the learned DR, the application is allowed to be withdrawn with liberty to file a proper application. Application stands disposed of accordingly.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(M. VEERAIYAN)
MEMBER (TECHNICAL)

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

Date of hearing/decision: 05.03.2010

Excise COD No. 12 of 2010, Excise Stay No. 2524 of 2008 in Excise Appeal No. 2517 of 2008

CCE, Jammu — Appellant [Rep. by Shri B.L. Soni, DR]

Vs.

M/s Emco Wires & Cable Industries — Respondent [Rep. by Sh. A.S. Gill, Advocate]

ORDER SHEET

On request by the learned Advocate for the respondent to enable the respondent to file affidavit, time granted. The affidavit to be filed within two weeks with a copy thereof to the office of SDR. Stand over to 16.04.2010.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

/Pant/