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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/1383/2010 – SM[BR] &E/STAY /1413/2010-SM[BR] Date 23/09/2010

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

To :
M/S. SAMRUDDHI CEMENT LIMITED (UNIT-BIRLA WHITE)
(FORMERLY WHITE CEMENT DIVISION OF GRASIM INDUSTRIES LIMITED) KHARIA KHANGAR DISTT. JODHPUR
342606

M/S. SAMRUDDHI CEMENT LIMITED (UNIT-BIRLA WHITE) Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.**1034/2010-SM[BR]&S/452/2010 dated 10.9.2010 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. JAIPUR II
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
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. 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

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH
E/Stay/1413/10 in Appeal No.E/1383/10-SM

(Arising out of Order-in-Appeal No.103 (KKG) CE/JPR-II/2010 dated 04.03.2010 passed by the Commissioner of Central Excise, Jaipur)

Date of Hearing/Decision:06.08.2010

M/s.Samrudddhi Cement Limited. Appellant
Vs.
CCE, Jaipur-II Respondent

Present for the Appellant: Shri B.L.Narsimhan, Advocate
Present for the Respondent: Shri S.R.Meena, SDR

Coram: Hon'ble Mr. D.N.Panda, Judicial Member

Final **ORDER NO.** 1034/2010 SM(BR)
S-452/2010 SM(BR)

PER: D.N.PANDA

Learned Counsel for the appellant submits that due to ignorance of law, the appellant could not file delay condonation petition before learned Commissioner (Appeals). This particular matter is well within the discretion of the Commissioner (Appeals) to reasonably consider the case of the appellant. He submits that there is reasonable cause which shall certainly satisfy the Commissioner (Appeals) and appellant may not be thrown at the threshold. An opportunity of hearing may be granted to make prayer before learned authority below to consider the grievance of the appellant on merits without being debarred on the limitation issue itself.

2. Learned DR supports the order of the authority below.

3. Heard both sides.

4. To uphold the majesty of law, it is the requirement of justice to find out whether there was deliberate delay or malafide on the part of the appellant because no one shall prefer to cause prejudice to it.
Nothing is apparent from para 4 of Order-in-Appeal to show that the

appellant has any malafide or deliberate intention to cause prejudice to itself. It may be stated that length of delay is immaterial while cause of delay is material for condonation of delay. This can be said following the ratio laid down by the Apex Court in the case of N. Balakrishnan vs. M.Krishnamurthy reported in 2008 (228) ELT 162 (SC). Accordingly, the appellant is directed to make proper application before the learned appellate authority for condonation of delay. If an application is made, that Authority shall consider the facts and circumstances of the case and pass appropriate order. ~~Even~~ If he finds the application has any substance he shall admit the appeal exercising judicious discretion vested on him. Consequently, waiving requirement of pre-deposit, the matter is remanded to learned appellate authority below to do justice to the appellant.

(D.N.Panda)
Judicial Member

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