TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. C/279 /2009 – SM[BR] Date 09/11/2010

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

To :
M/S R.S. ARORA & CO.
S-211, 2ND FLOOR, GREATER KAILASH-I,NEW DELHI.

M/S R.S. ARORA & CO. Appellant

Vs

C.C. (ICD) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.**1189 / 2010-SM[BR] dated 31.8.2010 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C. (ICD) NEW DELHI
   ICD, TUGHLAKABAD, NEW DELHI 110020.
2. Adv. / Consult
   MR.PIYUSH KUMAR,ADV
   B-25,LAJPAT NAGAR-III,N.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. 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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Date of Hearing/Decision:31.8.2010

Customs Appeal No.279/09-SM (BR)

(Arising out of Order-in-Appeal No. CC(A)Cus./ICD/81/09 dated 15.04.2009 passed by the Commissioner of Customs (Appeals), New Delhi)

For approval and signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

---

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 should 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 Departmental authorities?

M/s. R.S. Arora & Co. **Appellant**

Vs.

CC, New Delhi **Respondent**

Appearance: None on behalf for the appellant.
Rep. by Shri A. Khanna, JDR for the Respondent.

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)

Final **Order No.** 1189/2010 SM (BR) **/Dated: 31.8.2010**

Per Ashok Jindal:

The appellant filed this appeal against the Order of Commissioner (Appeal), who has rejected the appeal hold the appeal is barred by the duration of 90 days to filed the appeal before the Commissioner (Appeal). The facts of the case are that the appellant filed the refund claim before the Assistant Commissioner Customs (Refund), ICD, Tuglakabad, New Delhi.

2. The said refund claim was examine by the Assistant Commissioner Customs and rejected the refund claim on 10.7.2008. The said order was given a dispatched No. 14242 to 45 dated 18/7/2008. The appellant filed an appeal against the order before the Commissioner (Appeal) on 23.3.2009 with a delay of 188 days. The appellant submitted before the Commissioner (Appeal) they have not received the order till 02.3.2009. They have applied for the same was supply to them 02.3.2009 and on 23.3.2009 they filed the appeal. The Commissioner (Appeal) dismissed the appeal hold that there is a delay of more than 30 days beyond the extended period of limitation and Commissioner (Appeal), without examine the facts when the Adjudicating order was dispatched to the appellant or not. There is no postal receipt in on records.

3. None appeared on behalf of the appellant.

4. No Adjournment request was received. The matter has been taken on merit.

5. Heard the Ld. DR, on examination of records and submissions by the ld. DR, I find that the Commissioner (Appeal) while dismissing the appeal as time barred has not considered the fact that when the Adjudication Order was sent to the appellant. No postal receipt is on record. In these circumstances, it would be appropriate the remand back the matter to the Commissioner (Appeal) to ascertain the date of dispatch of the Adjudication

Order. If the Adjudication Order was not dispatched, the Commissioner (Appeal) shall decide the appeal on merit after giving the reasonable opportunity to the appellant.

6. With these observations, the impugned order is set aside and the appeal is allowed by way of remand.

(Dictated and pronounced in the open court).

(Ashok Jindal)
Member (Judicial)

(K. Gupta)