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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/794 /2010 – SM[BR] &E / STAY / 838 / 2010 –SM[BR] Date 22/07/2010

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

To :
M/S GUPTA WIRE PRODUCTS,
43, PRITHVI NAGAR, HOSHIARPUR ROAD,
JALANDHAR.

M/S GUPTA WIRE PRODUCTS, Appellant

Vs

C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 787 /2010-SM[BR]&S/318/2010 dated 9.7.2010 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. LUDHIANA
   CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR, LUDHIANA 141001 (PUNJAB)
2. Adv. / Consult
   MR.SUDHIR MALHOTRA.
   13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR
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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Stay Application No. 838 of 2010-SM(BR)
Excise Appeal No. 794 of 2010-SM(BR)

[Arising out of Order-in-Appeal No. 18-CE/Ldh/2010 dated 20.1.2010 passed by the Commissioner of Customs & Central Excise (Appeals), Chandigarh]

For approval and signature:
Hon'ble Mr. M. Veeraiyan, Member (Technical)

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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? : Yes
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

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M/s. Gupta Wire Products — Appellants

Vs.

Commissioner of Central Excise
Ludhiana — Respondent

Appearance:

Shri Sudhir Malhotra, Advocate for the Appellants
Shri R.K. Gupta, DR for the Respondent

Date of Hearing/decision : 9.7.2010

Final **ORAL ORDER NO.** 787/2010 SM(Br) & S-318/2010 SM (Br)

Per M. Veeraiyan:

The pre-deposit of dues as per the impugned order waived. Appeal itself is taken up for final hearing.

2. The matter is before the Tribunal for the second time having been remanded to Commissioner (Appeals) vide Final Order No. 859/2007-SM dated 11.4.2007 with the following directions:

> "3. In view of the above, the impugned order is set aside and the matter is remanded back to the Commissioner (Appeals) to decide the case afresh with a direction to allow the appellant to inspect and to take copies of the relevant documents in respect of despatch registers of the Division Office and the despatch by registered post to the appellants, as contended by the Assistant Commissioner. The appeal is allowed by way of remand."

3. The department was directed vide Misc. order No. 135/2010 dated 14.6.10 to file a reply to factual submissions made by the applicants in their memorandum of appeal and also to produce the records relating to dispatch of order in original and handing over the same to the appellant.

4. Learned SDR submits a copy of the report dated 21.6.10 addressed to him and adopts the same as a reply to the various points raised in the appeal memorandum. He also produced the dispatch register maintained by the Division during the relevant period. He draws my attention to the entries relating to 4.9.03. On perusal of the entries relating to 4.9.03, it is noticed that the order of the original authority V-30(164)D/94 was shown to have been dispatched under S.No. 1476 to M/s. Gupta Wires Products, under

S.No. 1477 to Deputy Commissioner (Review), Chandigarh, under S.No. 1478 to Range Superintendent and under S.No. 1479 to the guard file. Against entry at S.No. 1476, there is some initial dated 4.9.03. It is claimed that the initials are by the representative of the appellant ~~that~~ there is no name of the person nor his designation though a submission was being made that this was the initial of Excise incharge of M/s. Gupta Wire Products. On perusal of the order in original it is noticed that the order addressed to M/s. Gupta Wire Products was required to be despatched under "Registered AD". Learned SDR is not in a position to confirm whether the order-in-original was despatched by Registered AD. The entries in the despatch register of the Division has been perused by me which do not indicate the service of the order to the authorised person of M/s. Gupta Wire Products, as no indication of name or designation of the representative who has received the order-in-original on 4.9.03 is available.

5. In the light of the above, the submission of the learned Advocate for the appellant that they came to know of the order having been passed by the original authority only after the communication was received from the Range Superintendent on 7.10.04 and accordingly, they collected the copy of the order-in-original from the Range Superintendent and filed their appeal before the Commissioner (Appeals) on 28.10.04 and therefore, appeal has been filed within the prescribed time limit for filing the appeal before the Commissioner (Appeals) has to be accepted.

6. As a result, the order of the Commissioner (Appeals) in holding that the appeal filed by the appellants was barred by time cannot be sustained.

7. It is unfortunate that the department has not taken care to see and implement the directions of the Tribunal dated 11.4.2007 properly. It is also not appreciated that the orders of the original authorities are sought to be served or claimed to have been served casually and not in a manner prescribed under section 37C of the Central Excise Act, 1944.

8. The Commissioner (Appeals) having held that the appeal was time barred, have not gone into merits of the case. In view of the above, the order of the Commissioner (Appeals) is set aside and holding that the appeal is filed before the Commissioner (Appeals) within the stipulated time. Commissioner (Appeals) shall decide the appeal on merits after granting reasonable opportunity of hearing to the appellants.

9. The appeal is allowed by way of remand. Stay petition is also disposed of.

(M. Veeraiyan)
Member(Technical)

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