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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. ST/314 /2009 – SM[BR]& ST /STAY/1100/2009&ST/MISC/561/2009& ST / ROA /93 / 2010-SM[BR] Date 30/07/2010

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

To :
M/S MAGADH ROADLINES PVT. LTD.
1/4 HIG, RAJSTHAN HOUSING BOARD, BHIWADI,
DISTT. ALWAR.

M/S MAGADH ROADLINES PVT. LTD. Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No**.851/2010-SM[BR]&S/330/10&M/192-193/10 Dated23.7.10 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.E. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult SHRI D.K.TYAGI ADV.
   C-605, CHAWLA COLANY BALLABGARH[FARIDABAD]
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.2, R.K.Puram, New Delhi

COURT-III

SINGLE MEMBER BENCH

Date of hearing/decision: 23.7.2010

Miscellaneous Application No.561 of 2009-SM
Restoration Application No.93 of 2010-SM
Stay Application No.1100 of 2009-SM and
Service Tax Appeal No.314 of 2009-SM

Arising out of the Final Order No.1290/2009-SM(Br.) dated 7.10.2009, Stay Order No.473/2009-SM(Br.) dated 17.8.2009 passed by the CESTAT, New Delhi read with Order in appeal No.18(DK)ST/JPR-I/2009 dated 3.3.2009 passed by the Commissioner of Central Excise (Appeals), Jaipur.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Technical Member

1	Whether Press Reporter 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 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

M/s Magadh Roadlines Pvt. Ltd. .... Appellant/applicant

Vs.

C.C.E., Jaipur .... Respondent

Appearance:

Shri D.K. Tyagi, Advocate for the appellant/applicant
Shri I. Baig, Authorised Departmental Representative (SDR) for the Revenue

Coram: Hon'ble Shri M. Veeraiyan, Technical Member

Final Oral Order No. 851/2010 SM(Br) & S-330/2010 SM(Br) & M-192-193/2010 SM(Br)

Per M. Veeraiyan:

Heard both sides on the application for restoration of appeal and the application for restoration of stay petition.

2. Vide Stay Order No.473/2009-SM(Br.) dated 17.8.2009, the stay application was disposed of for non-appearance of the applicant and directed to deposit the amount of penalty of Rs.1,33,000/- within six weeks and to report compliance on 7.10.2009.

3. The party filed Miscellaneous Application on 13.10.2009 for seeking restoration of the stay petition on the ground that they did not receive the notice prior to 17.8.2009 for hearing held on 17.8.09. Before the application could be taken up, the appeal itself was dismissed vide Final Order No. 1290/2009-SM(Br.) dated 7.10.2009 for non-compliance of the stay order. Since the appeal itself stands dismissed, now the party has filed restoration application No.93/2010 seeking restoration of the appeal.

4. Considering the grounds disclosed and considering the submissions from both sides, the final order of the Tribunal dated 7.10.2009 and stay order dated 17.8.2009 are recalled and the appeal and the stay petition are restored to their original numbers.

5. Pre-deposit of penalty is waived and stay petition is disposed of and appeal is taken up for final disposal.

6. The Commissioner (Appeals) has dismissed the appeal holding that the appeal has been filed after the prescribed time limit. He held that there was no justification for condonation of delay/

7. The order of the original authority was daed 7.8.2008 and the appellant was required to file appeal before the Commissioner (Appeals) on or before 6.11.2008 and admittedly, they filed the appeal only on 27.1.2009. There is delay and the delay is within condonable powers of Commissioner (Appeals). The reason adduced before the Commissioner (Appeals) was that Shri L.N. Sharma , Director of the Company was advised bed rest from 2.9.08 to 29.11.2008 and after resuming his duty, the Director entrusted the matter to his Advocate for preparing and filing of appeal before the Commissioner (Appeals). Hence there was delay. Under these circumstances, it would have been appropriate for the Commissioner (Appeals) to condone the delay and hear the appeal on merit.

8. In view of the above, I set aside the order of the Commissioner (Appeals) and condone the delay in filing of appeal before the Commissioner (Appeals) and direct him to decide the appeal on merit without insisting on any pre-deposit. He shall hear the party before passing order in the appeal.

(M. Veeraiyan)
Technical Member

scd/