

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/696 -97/2010 - CU[DB]
ST/COD/189-90/10 & ST/S/1242-43/10

Date 07/09/2011

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

To :
M/S. GLOBAL WASTE MANAGEMENT CELL
B-78, RAJENDRA MARG, OPP D D TOWER, BAPU
NAGAR, JAIPUR.
M/S. GLOBAL WASTE MANAGEMENT CELL

Appellant

Vs
Respondent

C.C.E. JAIPUR I

I am directed to transmit herewith a certified copy of Final order No.ST/428-29 2011 CU[DB] dated 02.09.2011
passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Alongwith Stay Order No ST/599-600/2011 &
Misc order No ST/140-41/2011


Assistant Registrar

(Customs Appeal Branch)

Copy to :

1. Respondent

C.C.E. JAIPUR I

N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult : Mr. M.M. Bratt, Adv.
4/B, Devdarsham Society
5th Carter Road, Borivali (East)
Mumbai - 66

3. C.D.R

4. Bar association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -

7. Company Law Institute of India Pvt Ltd., No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005

9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,
Ahmedabad-15

10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10, Faridabad 121003 (Harvana)

11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road,
Vasant Kunj, New Delhi - 110070

12. Office Copy

13. Guard file


Assistant Registrar
(Customs Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III**

**Service Tax Appeal No. 696-697 of 2010
Service Tax COD Application No. 189-190 of 2010
Service Tax Stay Application No. 1242-1243/2010**

[Arising out of Order-in-Appeal No. 216 - 217 (RKS) ST/JPR-I/
2007 dated 6.12.2007 passed by the Commissioner of Customs &
Central Excise (Appeals I) Jaipur]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. 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? | : | No |
| 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 |
-

M/s. Global Waste Management Cell
M/s. K.K. Carriers

Appellants

Vs.

Commissioner of Customs
& Central Excise Jaipur

Respondent

Appearance:

Shri B.L. Narasimhan, Advocate for the Appellants
 Shri Rajendra Gupta, SDR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
 Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing/decision : 29.08.2011

Misc order No. ST/140-141/11
 Final **ORAL ORDER NO. ST/428-429/11**
 Stay order No. ST/599-600/11

Per Archana Wadhwa (for the Bench):

Both the matters are being disposed of by a common order as more or less identical facts are involved. There is a delay of 837 days in filing the present appeals. Appeals stand filed against the order passed by the commissioner (Appeals) vide which he has dismissed the appeals filed before him on the ground of non-compliance with the stay order passed by him directing the appellants to deposit an amount of Rs.5 lakhs, in each case, as a condition of hearing of the appeals.

2. After hearing both sides, we find that the said order was passed by Commissioner (Appeals) on or around September / October, 2007. Thereafter, the appellant filed modification application ~~filed~~ before him which stands rejected by him on 13.11.07. Thereafter, the appellants filed writ petition before the Hon'ble High Court of Rajasthan on 21.11.07. The said writ petition was taken by Hon'ble High Court on 5.12.07 who issued notices to Additional Solicitor General and listed the matters on 13.12.07. It was also observed by the Hon'ble High Court in

the meantime if any other order is passed, the same shall abide by the judgement passed in that writ petition.

3. Though the said order was passed by the High Court on 5.12.07, the same could not be placed by the appellant before Commissioner who vide his order dated 6.12.07 (a day thereafter) dismissed the appeals for non compliance of said order. As per the appellants, as the matters were pending before the High Court and interim order was passed with a rider that any other order passed by the authorities under the Act would be subject to final outcome of the writ petition, they did not challenge the said order of dismissal passed by the Commissioner (Appeals). The writ petition continued to remain pending before the High Court till 21.2.11 in the case of K.K. Carriers and the same is still pending before the Hon'ble High Court in the case of Global Waste and Management Cell.

4. In or around March, 2010, the appellant consulted their advocate in the matter of pendency of writ petition before the Hon'ble High court and were so advised by the advocate to formally file the appeal against the order of dismissal. Accordingly, they filed the appeal on 23.3.2010 along with condonation of delay application.

5. Learned advocate submits that the delay has occurred on account of bonafide belief that as the matter is pending before the Hon'ble High Court and in terms of interim order passed by the High Court, any order passed by the authorities shall abide by the judgement of High Court in the writ petition, so they did not challenge the impugned order of dismissal by Commissioner. It is

only on the advise of the advocate that they subsequently filed the appeals before the Tribunal. He submits that the delay being on account of a bonafide impression and belief being entertained by them that the final outcome of the writ petition would be applicable to the facts of their case, the delay in the present appeal be condoned.

6. After hearing the learned SDR and appreciating the above circumstances leading the applicant to file delayed appeal and keeping in view the fact that writ petition during the relevant period were pending decision before the High Court and the fact that the direction of the Hon'ble High Court to the effect that any order passed by the authorities shall abide by the final judgement of the writ petition, we conclude that the appellant might had a bonafide belief that no further action is required by them as regards the dismissal of appeal. We, accordingly, condone the delay of 837 days in filing the appeals and allow the COD application.

7. We further note that in the case of Global Waste Management Cell, the writ petition is still pending before the Hon'ble High Court and as Commissioner (Appeals) has dismissed the appeals for non-compliance during the pendency of the writ petition before the Hon'ble High Court, we set aside the impugned order of the Commissioner (Appeals) and remand the matter to him for decision, after the outcome of the writ petition and subject to the final verdict given in that judgement.

8. As regards the appeal of M/s. K.K. Carriers, we find that the Hon'ble High Court vide order dated 21.2.2011 had rejected the

writ petition filed before them. They have further observed that the appellant has a remedy of filing the appeal before the Tribunal against the order of dismissal. We further note that from the order of the High Court that there is no direction reducing the quantum of pre-deposit required to be made by the appellant. We accordingly, direct M/s. K.K. Carriers to deposit Rs.5,00,000/- Rs.Five lakh only) within a period of 6 weeks from today (period suggested by the learned advocate) and report compliance to Commissioner (Appeals) who would after ascertaining the compliance decide the appeal on merits.

9. Both COD applications, stay petitions and appeals get disposed of in the above manner.

(Pronounced in the open Court)

(~~Archana~~ Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)