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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

CUSTOMS APPEAL BRANCH

Date **01/06/2011**

Appeal No. C/616 /2009-617 /2009 - CU[DB], C/S/2827-2828/09

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

To :
M/S SHALIMAR WIRES INDUSTRIES LTD.
E-26/29, MIDC, SATPUR, NASHIK-422007.

M/S SHALIMAR WIRES INDUSTRIES LTD. Appellant

Vs

C.C. (ICD) NEW DELHI Respondent

STAY ORDER NO.C/188-189/2011

I am directed to transmit herewith a certified copy of **Final order No.C/214-215/ 2011 CU[DB]** dated 30.05.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C. (ICD) NEW DELHI
ICD, TUGHLAKABAD,
NEW DELHI 110020.

2. Adv. / Consult
MR.ECONOMIC LAW PRACTICE AT DELHI
405,4TH FLOOR,WORLD TRADE CENTRE,
BARAKHAMBA LANE,NEW DELHI

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
6. M/s Centax Publictions 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 (Haryana)
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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
COURT NO.III

Application No.C/S/2827-2828/09

Appeal No.C/616-617/09

Arising out of OIA No.CC(A)Cus./ICD/201& 202/2009 dated 03.07.09

Passed by: Commissioner of Customs (Appeals), New Delhi

For approval and signature:
Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, 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

Appellant/s	...	M/s. Shalimar Wires Industries Ltd.
Represented by	...	Shri Kishore Kunal, Advocate
		Vs.
Respondent/s	...	CC New Delhi
Represented by	...	Shri S.R. Meena, SDR

CORAM:
MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)
MR. MATHEW JOHN, MEMBER (TECHNICAL)

Date of Hearing:27.05.11
Date of Decision:27.05.11

Stay order No C/188-189/11

Final ORDER No. C/214 -215/11

Per: Archana Wadhwa:

After dispensing with the condition of pre-deposit of dues in both the appeals i.e. duty of Rs.30,15,200/- and Rs.31,83,236/- and penalty of Rs.7.50 lakhs and Rs.8 lakhs, we proceed to decide the appeal itself with the consent of both the sides, as we find that the issue lies in narrow compass.

2. Commissioner of Customs (Appeals), vide his impugned order has dismissed both the appeals filed before him on the ground that there was a delay of around 468 days in filing the same and in as much as he has powers to condone the delay of only 30 days, he has dismissed the appeals as barred by limitation.

3. Challenging the above findings, learned advocate appearing for the appellant submits that they had not received the impugned order of the original adjudicating authority, neither had they received the show cause notice or personal hearing notices and never participated in the adjudication proceedings. In as much as their factory was closed, they were not even aware of the above proceedings going on. It was only subsequently when the Revenue approached them for recovery of the dues, that they went to the office of the Assistant Commissioner ICD and collected a copy of the Order-in-Original and filed appeals ~~their~~ there against before Commissioner (Appeals) within a period of 60 days from the date of obtaining a copy of the Assistant Commissioner's order. As such

~~Submits~~ the learned advocate submits that the appeals having been filed within a period of 60 days from the date of communication of the order, the same should have been considered as having been filed well within the period of limitation. For the above proposition he relies upon the Hon'ble Supreme Court's decision in the case of **Assistant Transport Commissioner, Lucknow & Others Vs. Nand Singh** reported in **1979 (4) SCC 19** laying down that date of receipt or communication of the impugned order is the relevant date for the purposes of arriving at the limitation period and not the date of the order itself would be the starting of the limitation. He also relies upon other decisions laying down as to what is the meaning of communication to support his view that it is the constructive communication which is relevant for the purposes of limitation. He also relies upon the Larger Bench decision of the Tribunal in the case of **Margra Industries Ltd. Vs. Commissioner of Customs, New Delhi** reported in **2006 (202) ELT 244 (Tri. – L.B)** laying down that there is no scope for presumptions as regards delivery of order in taxing matters. He further submits that though reliance was placed upon all these decisions, before Commissioner (Appeals), he has chosen to ignore the same. It is also the contention of the learned advocate that the impugned dues stand confirmed against the appellant on the allegations and findings of non fulfillment of export obligations, whereas they have all the necessary evidences to reflect upon the fact of fulfillment of export obligation. As such, he submits that the appellant has a good case on merits and because of the above technical dismissal of appeal, the appellant would be put to a ~~disadvantage~~ disadvantageous position.

4. Countering the arguments, learned DR Shri S.R. Meena appearing for the Revenue submits that as per the findings of Commissioner (Appeals), the impugned order was pasted on the notice board of the factory. As such he submits that the same amounts to proper service in terms of the provisions of Section 153 of the Customs Act, 1962. In support of his above submission he draws our attention to the various orders, relied upon by Commissioner (Appeals) in his impugned order. He also draws our attention to the Hon'ble Supreme Court's decision in the case of **Singh Enterprises Vs. CCE Jamshedpur** reported in **2008 (221) ELT 163 (S.C.)** laying down that Commissioner (Appeals) has no powers to condone the delay beyond the period of 30 days.

5. After considering the submissions made by both the sides, we find that there is no quarrel about the issue that Commissioner (Appeals) has no powers to condone the delay beyond the period of 30 days. In fact the above issue stands settled by various decisions of the various judicial and quasi judicial authorities including the judgment of the Hon'ble Supreme Court in the case of Sing Enterprise relied upon by the learned SDR. However, we find that the issue required to be decided in the present appeal is not the issue relating to powers of Commissioner (Appeals) to condone the delay beyond the period of 30 days. The same relates to the fact as

to whether the appeal was filed within a period of 60 days from the date of receipt of the order or not. This involves resolving of the factual question as to on which date the impugned order was received by the appellant. It is an admitted fact by both the sides that their factory was lying closed for a longer period. The appellant did not participate in the adjudication proceedings on account of non receipt of show cause notice and on account of non receipt of the notices of personal hearing. It is also accepted in the impugned order of Commissioner (Appeals) that the impugned order was not served upon the appellant in person but the same was pasted on the notice board of the factory after the same was returned back by the postal authorities with remarks "not claimed".

6. Learned advocate submits that they have already filed an affidavit in support of their contentions that the factory was closed and it was only a guard available in the factory who might have refused to take the delivery. The said affidavit stands filed by them in terms of the directions contained in the Tribunal's order dated 27.11.09.

7. In view of the above, we find that in as much as Commissioner (Appeals) has not decided the issue of the actual date of receipt of the order, in the light of the declaration of law by the Larger Bench in the above referred decision of Margra Industries Ltd. as also has not referred to the other judgments including the Supreme Court's decision, relied upon by the

appellant to decide about the actual date of communication of the order, we deem it fit to decide the impugned order and remand the matter to Commissioner (Appeals) for deciding the actual date of communication of the order and to decide the fact of limitation subsequently. In case the appeal is held to have been filed within the period of limitation, the appellate authority would decide the matter on merits. Stay petition as also appeal get disposed off in above manner.

(Order Dictated and Pronounced in the Open Court)

(Mathew John)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

*Jk**