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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

Appeal No. ST/559 /2010-561 /2010 - CU[DB]
ST/S/943-45/10

Date **25/02/2011**

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

To :
M/S HOSHIARPUR AUTOMOBILES,
JALANDHAR ROAD, HOSHIARPUR.

M/S HOSHIARPUR AUTOMOBILES, Appellant

Vs

C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/59 TO 61/ 2011 CU[DB]** dated 22.02.11 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/106-108/11

Assistant Registrar
(Customs 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. 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. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

M/S HOSHIARPUR AUTOMOBILES,
JALANDHAR ROAD, HOSHIARPUR.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

COURT NO. IV

ST/Stay application No. 943-945/2010 in and Appeal No. 559-561 of 2010

[Arising out of Order-in-Appeal No. 85-87/CE/Ldh/2010 dated 17.3.2010 dated 18.3.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh].

Date of Hearing: 18th February, 2011

For approval and signature:

Hon'ble Shri Ashok ~~Kumar~~ Jindal, Member (Judicial);
Hon'ble Shri 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?	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether Their Lordships wish to see the fair copy of the Order?	No
4	Whether Order is to be circulated to the Departmental authorities?	No

M/s. Hosiarpur Automobiles — Appellants

Vs.

CCE, Ludhiana — Respondent

Present for the Appellant :Shri Sudhir Malhotra, Advocate
Present for the Respondent :Shri Fateh Singh, SDR

Coram: Hon'ble Shri Ashok ~~Kumar~~ Jindal, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

FINAL ORDER NO. ST/59-61/11
Stay order No. ST/106 to 108/11

Per ASHOK KUMAR JINDAL:

These appeals are arising out of impugned order wherein the appeals filed by the appellants before the lower appellate authority had been dismissed on limitation. After hearing both sides at length we find that appeals themselves can be disposed of at this stage. Therefore, after waiver of requirement of pre-deposit, we took up the appeals for final disposal with the consent of both sides.

2. The facts of the case are that the appellants received the impugned order dated 29.1.09 on 1.2.09. Thereafter, as per provisions of Section 85(3) of the Finance Act, 1994 the appellants had to file appeal within 3 months from the date of communication or order i.e. on or before 1.5.2009. The appellants could file appeals before the Commissioner (Appeals) only on 17.7.2009 i.e. within the period of limitation as per provisio~~ns of~~ to Section 85(3) of Finance Act, 1994. The reason stated by the appellants for delay in filing the appeals is that the Cost Accountant who was dealing the matter could not file appeals in time due to medical problem of this father. But the lower appellate authority did not consider this ground as satisfactory and the appeals were dismissed as barred by limitation. Aggrieved from this order the appellants are before us.

3. Learned Advocate for the appellants submits that the reasons for delay in filing the appeals before lower appellate authority are neither mala fide nor intentional. The appeals could not be filed in time as the Cost Accountant who was dealing with the matter could not join duty because of health problem of his father.

4. Heard and considered.

5. On a careful consideration we find that in this case appeals have been filed within the period prescribed under the provisio~~n of~~ to Section 85(3) of the Finance Act, 1994. Same has been considered

by the lower appellate authority in the impugned order. The only reason for dismissal of appeal is that the reason taken by the learned Advocate was not up to the satisfaction of the lower appellate authority. We further find that the appellants have filed an affidavit executed by the learned Cost Accountant who took responsibility for non-filing the appeals within the period prescribed under Section 85(3) of the Act. It is a fact on record that the said affidavit was not controverted. Hence, we take note of that affidavit and find that the appellants have been able to explain the reason for delay in filing the appeals up to the satisfaction of this Bench. As in series of cases, the Hon'ble Apex Court has held that substantive benefit should not be denied to the appellants by not condoning the delay. Following the same ratio, we condone the delay in filing the appeal before the lower appellate authority and send back the matter to the lower appellate authority to pass the order on merit after giving reasonable opportunity to the appellants to put forth their case.

(Dictated & pronounced in the Open Court.)

(ASHOK ~~KUMAR~~ JINDAL)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

RK