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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. C/317 /2007 - CU[DB] Date **17/01/2011**

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

To : PRITAM SINGH,
C-36, SOUTH EXTENSION, PART-II,
NEW DELHI

PRITAM SINGH Appellant

Vs

C.C. NEW DELHI (IMPORT & GENERAL) Respondent

I am directed to transmit herewith a certified copy of **Final order C/22/ 2011 CU[DB]** dated 13.01.2011 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. NEW DELHI (IMPORT & GENERAL)
NEW CUSTOM HOUSE, NEAR
I.G.I. AIRPORT, NEW DELHI
110037.
2. Adv. / Consult
MR.T.P.S.KANG
F-71, MOTI BAGH-I,
NEW DELHI - 110021.
3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
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 -
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 (Harvana)
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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING : 12/01/2011.
DATE OF DECISION : 12/01/2011.

Customs Appeal No. 317 of 2007

[Arising out of the Order-in-Appeal No. CC (A)/45/AIR/D-I/2007 dated 29/03/2007 passed by The Commissioner of Customs (Appeals), New Delhi.]

For Approval and signature :

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri M. Veeraiyan, 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 would 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? : Seen

4. Whether order is to be circulated to the Department Authorities? : Yes

Shri Pritam Singh — Appellants

Versus

CC, New Delhi — Respondent

Appearance

Shri Pritam Singh – for the Appellants.

Shri Amrish Jain, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri M. Veeraiyan, Member (Technical)

Final Order No. C/22/11 Dated : 13.1.11

Per. Archana Wadhwa :-

After rejecting the request for adjournment, we proceed to decide the appeal itself in as much as we find that the Commissioner (Appeals) has rejected the appellant's appeal on the point of limitation. He has observed that the impugned order passed by the original Adjudicating Authority stands delivered to the appellant's address on 17/09/05, as confirmed by the postal authorities. As such, the appeal filed on 19/1/06 is after the expiry of statutory period of 60 (sixty) days and is time barred in terms of the provisions of Section 128 of the Act.

2. On the other hand, the appellant, in their memo of appeal have submitted that the order passed by the lower authorities was actually communicated to them on 30/11/05. The Appellate Authority's findings that the order was delivered at the appellant's address on 17/09/05 were based upon the verification done from the postal authorities, the result of which was never shown to them or communicated to them. As such, he ~~are~~ has submitted that the impugned order is in violation of principle of natural justice.

3. For better appreciation, we reproduced the para 5 of Commissioner (Appeals)'s order :-

"5. I have carefully gone through the case records available in the Appeal Memorandum and oral submissions made by the Appellant during the Personal Hearing. Firstly, the issue of condonation of delay is to be decided. I find that verification from the postal authorities vide their letter No. SPC Delhi TD 3/04/06 date 04/04/2006 revealed that the impugned Order-in-Original was dispatched by the Deptt. On 16.9.2005 and delivered at the Appellant's address on 17.9.2005. The Appellant's contention that the impugned Order-in-Original was communicated to him after 30.11.2005 does not hold good and is a lame excuse. I find that since, this appeal has been filed on 19.1.2006, after the expiry of statutory period of sixty days it is time barred under Section 128 of the Act. Since appeal is time barred, no further discussion on merits is considered necessary."

4. There is nothing in above order of the Appellate Authority that the verification done by them and the result of such verification was communicated to the appellant. The principles of natural justice require providing of such information, which is being relied upon by the authorities to the appellant, so as to enable them to contest the same. As such, we are of the view that impugned order is liable to be set aside on this sole ground itself. We further note that the Commissioner (Appeals) has the powers to condone the delay of 30 (thirty) days. As such, we direct the Appellate

Authority to consider the actual days of delay in filing the appeal and if the same is within his condonable powers, to exercise his powers accordingly. Appeal is allowed by way of remand.

(Dictated and pronounced in open court.)

(Archana Wadhwa)
Member (Judicial)

(M. Veeraiyan)
Member (Technical)

PK