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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/30 /2010 - CU[DB], C/S/183/2010 Date **28/01/2011**

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

To :
M/S LECTRIX MOTORS LTD.

NEW KHASRA NO. 210, 1771/197, UPMAHAL
SHIVPUR, MEHAL MUBARIKPUR,
TEHSIL-AMBALA.,
DISTT. UNA-1772

M/S LECTRIX MOTORS LTD. Appellant

Vs

C.C. (ICD) NEW DELHI **STAY ORDER NO.C/46/11** Respondent

I am directed to transmit herewith a certified copy of **Final order C/48/ 2011 CU[DB]** dated 21.01.2011

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. (ICD) NEW DELHI
ICD, TUGHLAKABAD, NEW
DELHI 110020.

2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE,
NEW DELHI-110029

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 (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)

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

Customs Appeal No. 30 of 2010
Customs Stay Application No. 183 of 2010

[Arising out of Order-in-Appeal No. ICD/322/2009 dated 26.10.2009 passed by the Commissioner of Customs (Appeals), New Delhi]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

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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?	:	No
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

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M/s. Lectrix Motors Ltd. — Appellants

Vs.

Commissioner of Customs
New Delhi — Respondent

Appearance:

Shri A.R. Madhav Rao, Advocate for the Appellants
Shri Amrish Jain, DR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing/decision : 21.01.2011

Final **ORAL ORDER NO.** C/48/11
Stay order No. C/46/11

Per Archna Wadhwa (for the Bench):

After hearing both sides, duly represented by Shri A.R. Madhav Rao, Advocate for the appellant and Shri Amrish Jain, SDR for the revenue, we find that the Commissioner of Customs (Appeals) has rejected the appeal on time bar by refusing to condone the delay of 32 days in filing the appeal on the ground that he does not have powers to condone the delay beyond 30 days. While we do not have any ~~question~~ quarrel on the legal issue ~~raised by the appellant~~, as the law on the above issue stands settled by the Hon'ble Supreme Court decision in the case of Singh Enterprises vs. CCE, Jamshedpur reported in [2008 (221) ELT 163 (SC)], we take into consideration the appellant's contention that the appeal was actually filed within a period of 60 days but before the wrong forum inasmuch as the order was passed by the Assistant Commissioner of Customs, ICD, Tuglakabad, New Delhi, the appeal was also filed before the Commissioner of Customs, ICD, Tuglakabad, New Delhi by mistake. Subsequently, they received a communication from the office of Commissioner indicating that they are not the right forum to file the appeal and same should be collected from their office and be filed in right office. The appellant acted accordingly thus resulting in delay of 32 days. In the above scenario, the learned advocate submits that the period during which the appeal was lying in the office of Commissioner, has to be excluded for the purpose of computing the delay in filing the present appeal. However, he fairly agrees that the above facts and legal issues ~~are~~ were never brought to the notice of the Commissioner (Appeals) and never raised before him. We find that the above contention of the appellant to be correct and accordingly, set aside the impugned order of Commissioner (Appeals) and remand the matter to him for reconsideration of the COD application filed by the applicant. We make it clear that no views are expressed on the said issue of COD and the appellants are free to raise the factual as well as legal issues before Commissioner (Appeals).

2. Stay petition as also appeal are disposed of in the above manner.

(Archana Wadhwa)
Member(Judicial)

(M. Veeraiyan)
Member(Technical)

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