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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/206 /2010 - CU[DB], C/S/1131/2010 Date **13/06/2011**

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

To :
BRAJESH KUMAR DUBEY
E-27, NEW MULTAN NAGAR, NEW DELHI.

BRAJESH KUMAR DUBEY Appellant

Vs

C.C. NEW DELHI (IMPORT & GENERAL) **STAY ORDER NO.C/204/2011** Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/250/ 2011 CU[DB]** dated 02.06.2011 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 M.S. BHATIA, ADV.
G-11, MAGNUM HOUSE-II,
KARAMPURA COMPLEX, 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/1131/10

Appeal No.C/206/10

Arising out of OIO No.ACU/VS/44/99 dated 14.10.99

Passed by: Commissioner of Customs, 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?	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

Appellant/s ... Shri Brajesh Kumar Dubey

Represented by ... Shri M.S. Bhatia, Advocate

Vs.

Respondent/s ... CC New Delhi

Represented by ... Shri Sonal Bajaj, 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/204/11
Final ORDER No. C/250/11

Per: Archana Wadhwa:

The present appeal stands filed by the appellant on 11.03.10 against the order dated 14.10.99 passed by Commissioner of Customs, Air Cargo, New Customs House, New Delhi. The appellants have shown the date of receipt of the impugned order as 14.12.09.

2. A preliminary objection stands raised by the learned SDR, as regards the appeal being barred by limitation. He submits that the impugned order was passed on 14.10.99. It is only subsequently that a photocopy of the said order was given to the appellant on 14.12.09 on the basis of the request made by him. The matter was being adjourned so as to enable the learned SDR to put evidence on record as regards the service of the said Order-in-Original.

3. On matter being called today, learned advocate appearing for the appellant submits that the said impugned order was never received by them and it is only subsequently when they applied for obtaining a copy of the same, it was given to them on 14.12.09. The appeal having been filed within a period of three months from the date of communication of the order is required to be treated as having been filed in time.

4. Learned SDR appearing for the Revenue has produced before us the original adjudication file. it is seen that apart from the various letters written by the Revenue to Shri Brijesh Kumar Dubey requesting him to deposit the penalty amount of Rs.15 lakhs as also the other dues, there are notings on the file indicating that the residential premises of the appellant were visited by the officers for recovery of the dues. The

appellant has given their address in the appeal memo as E-27, New Multan Nagar, New Delhi. The various letters, which were being addressed to the appellant right from 2004 onwards stand addressed to E-27, New Multan Nagar. There are about ten such communications placed on record by the learned SDR. It is not the appellant's case that he changed his address in the meanwhile, in as much as the address disclosed in the appeal memo is the same at which the letters for recovery were being sent by the Revenue.

5. In any case we note that as per the notings on the file the officers made visits to the appellant's above address. For better appreciation we reproduce the relevant notice.

> *"S.T.F. team visited the premises E-27 New Multan Nagar, New Delhi and found Mr. B.K. Dubey at his house. On being pressed with the demand of recovery, he assured to start paying in installments and disclosed that at present he does not have money and any property in his name. However he claimed to be running a hospital and will deposit from the savings made from the hospital.*
>
> *Due to shortage of time Rajesh Sharma's father could not be contacted and will be contacted shortly.*
>
> sd/-"

The officers had visited the premises but despite assurances, the dues have not been paid. It is suggested that coercive action needs to be taken as the dues are pending for more than 8 years without any restraint.

6. It is also seen that repeated visits were being made to the other noticee Shri Rajesh Sharma by the officers for recovery of the dues adjudged against him.

7. In view of all the above developments, it cannot be said that the appellant was not aware of passing of the impugned order. The appeal having been filed after a period of 10 to 11 years from the date of passing of the order is beyond the period of limitation. We also do not find any reasons to condone the said delay in as much as we find no bonafidies on the part of the appellant. We accordingly reject the appeal as barred by limitation. Stay petition also gets disposed off.

(Pronounced in Court)

(Mathew John)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

*Jk**