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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/694 /2007 - CU[DB]   Date **24/08/2011**

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

To :
M/S VIKAS UTILITIES PVT. LTD.
B-48, AMANPURI, NANGLOI, NEW DELHI.

M/S VIKAS UTILITIES PVT. LTD. Appellant

Vs

C.C. (ICD) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/381/ 2011 CU[DB]** dated 23.08.2011 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.PREM RANJAN KUMAR**
LGF 6/33, VIKRAM VIHAR,
LAJPAT NAGAR-IV,
NEW DELHI – 110 024.

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 (Harvana)
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,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
DIVISION BENCH

Customs Appeal No.694 of 2007

(Arising out of Order-in-Appeal No.CC(A)/CUS/ICD/D-II/97/07 dt.9.8.07 passed by the Commissioner of Customs(A), New Delhi)

Date of Hearing/Decision: 18.08.2011

For approval and signature:
Hon'ble Mrs.Archana Wadhawa, 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

M/s.Vikas Utilities — Appellant

Vs.

CC, New Delhi — Respondent

Present for the Appellant: Shri Prem Ranjan, Advocate
Present for the Respondent: Shri Sonal Bajaj, SDR

Coram: Hon'ble Mrs.Archana Wadhawa, Member (Judicial)
Hon'ble Mr.Mathew John, Member (Technical)

Final **ORDER NO.** C/381/11

PER: ARCHANA WADHAWA

After hearing both sides, we find that the Commissioner (Appeals) has dismissed the appeal on the ground of limitation by observing that there has been delay of 107 days in filing the appeal. The appeal stands filed before the Commissioner (Appeals) against the assessment order dated 21.5.2005 by the Assistant Commissioner (Customs), ICD, Tuglakabad.

2. It is seen that though as per the appellant, the appeal against the said order was despatched to the Commissioner (Appeals), New Delhi under a postal cover, the same was actually sent to the office of the Commissioner (Appeals), Mumbai and was received by the said office well within time. However, the appeal papers were returned back by the office of Commissioner (Appeals), Mumbai with a direction to file appeal before the Commissioner (Appeals), New Delhi. Thereafter the appeal was filed in the office of Commissioner (Appeals), New Delhi without any further delay. As such submitted ~~by~~ the learned Advocate that there is actually no delay in filing the appeal and the Commissioner (Appeals), Mumbai instead of returning the appeal papers, should have transferred the same to the office of the Commissioner (Appeals), New Delhi. For the above proposition, he relied upon the decision of the Tribunal in the case of Gallops Text (Bom.) Pvt.Ltd. vs. CCE, Mumbai-III-2005 (191) ELT642 (Tri.-Mum.)

Hence, the present appeal.

3. After hearing the learned SDR, we find that there is no dispute of receipt of appeal papers in the office of the Commissioner (Appeals), Mumbai. The Tribunal in the above referred decision of Gallops Text (Bom.) Pvt.Ltd. has held, under similar circumstance, that inasmuch as the appeal before the Commissioner (Appeals) was filed in time, though in a different office and was subsequently transferred to the appropriate office, the Commissioner (Appeals)

was not justified in dismissing the same on the point of limitation. In the present appeal, we note that the office of Commissioner (Appeals), Mumbai instead of returning the appeal papers to the appellant should have transferred the same to the office of Commissioner (Appeals), New Delhi for disposal of the same. As such, the first appeal having been filed in time, though before wrong office inadvertently, the appeal should not have been dismissed on limitation. Accordingly, we set aside the impugned order and remand the matter to the Commissioner (Appeals), New Delhi to decide the appeal on merits. The appeal is allowed by way of remand.

(Pronounced in the open court)

(ARCHANA WADHAWA)
MEMBER (JUDICIAL)

(MATHEW JOHN)
MEMBER (TECHNICAL)

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