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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/644 /2009 - CU[DB], C/S/2984/2009, C/MISC/444/2011 Date **26/12/2011**

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

To : M/S A.S.METALS & ALLOYS
VILL- JASSRAN, MANDI GOBINDGARH,
PUNJAB.

M/S A.S.METALS & ALLOYS Appellant

Vs

C.C.E. CHANDIGARH MISC. ORDER NO.C/312/2011, STAY ORDER NO.C/471/2011 Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/534/ 2011 CU[DB]** dated 20.12.2011 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.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017

2. Adv. / Consult
MR.GAURAV AGARWAL
RAM BHAWAN,G.T.ROAD,
MANDI GOBINDGARH, PUNJAB.

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)

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

Customs Appeal No. 644 of 2009
Customs Stay Application No. 2984 of 2009
Customs Mis.c Application No. 444 of 2011

[Arising out of Order-in-Appeal No. 43/Cus/Ldh/2009 dated 16.7.2009 passed by the Commissioner of Customs & Central Excise, (Appeals), Chandigarh]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, 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. A.S. Metals & Alloys — Appellants

Vs.

Commissioner of Customs
Chandigarh — Respondent

Appearance:

Shri Bipin Garg, Advocate for the Appellants
Shri R.K. Verma, SDR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing/decision : 9.12.2011

Misc. No. C/312/11

Final **ORAL ORDER NO.** C/534

S.O. No. C/147/11

Per Archana Wadhwa (for the Bench):

After dispensing with the condition of pre-deposit of duty and penalty, we proceed to decide the appeal itself as Commissioner (Appeals) has rejected the appeal on the point of time bar.

2. The order impugned before Commissioner (Appeals) was passed on 21.3.2007. As per the appellants, they received the same on 28.8.08, when their jurisdictional Central Excise authorities approached them for recovery of dues. On the other hand, we find that the Commissioner (Appeals) has called for a report from the jurisdictional Central Excise authorities. According to the said ~~undated~~ report, an undated receipt therein showing delivery of the order in original to the appellants stands referred to. The ~~adjudicating~~ appellate AO authority has referred to the fact that there is no signature showing the date of receipt of the impugned order on the said receipt and further inquiries were made from the office. As per the range office records, the delivery receipt was forwarded by their office to Superintendent (Tech) Central Excise Division, Mandi Gobindgarh vide their office letter of even C. No. 247

dated 3.7.07. Accordingly, he has observed that it becomes clear that the said order in original was delivered to the appellant on or before 3.7.2007.

3. Learned advocate appearing for the appellant draws our attention to his grievance with the fact that neither the delivery receipt nor the report of the officer was provided to the appellants so as to meet the objections of the Revenue. He submits that this has resulted in denial of principles of natural justice. In any case, by drawing our attention to the delivery receipt of record, he submits that same does not carry any date showing the receipt of the same. Even the signatures appearing on the said delivery receipt are neither of appellants representatives nor the same disclose the name of the person whose signatures are appended thereto. As regards the Range Superintendent letter dated 3.7.2007 forwarding the copy of the said receipt to the Division, he submits that same has not been provided to him. He feels unable to comment on the same.

4. Countering the arguments learned DR draws our attention to the fact that the delivery of the impugned order in original to the appellants could not be carried out by the normal post system. And as such the appellants jurisdictional Assistant Commissioner was requested vide letter dated 19.6.07 to deliver the impugned orders to the noticee concerned. He also submits that vide the same letter, two more orders pertaining to different noticees were also forwarded for personal

delivery to those assesses. There is no dispute about the delivery of those orders to the respective noticees. However, after delivering the impugned orders to the present appellant, the delivery receipt was forwarded by the Range to the Division under the cover of their letter dated 3.7.2007. The said letter is a part of the records maintained by the jurisdictional Range office in the normal course and should not be doubted. Admittedly, the appeal having been filed much after 3.7.2007 i.e. on 1.10.08, is clearly barred by limitation inasmuch as the Commissioner (Appeals) has no powers to condone the delay beyond the condonable limit of 60 days.

5. After hearing both sides, we find that there is no dispute about the legal issue that Commissioner (Appeals) has no powers to condone the delay beyond the condonable period of 30 days. Dispute in the present appeal relates to actual date of receipt of the impugned order in original. Though we find as per the letter C.No. 247 dated 3.7.2007 issued by Range Superintendent to the Division Superintendent showing the delivery of the order-in-original to the appellant, but we note that the said letter or delivery receipt or the report obtained from the Range Superintendent was not provided to the appellant, who is unable to contest the same. We are of the view that Commissioner (Appeals) before rejecting the appeal on limitation, by taking into account all the above evidence, should have provided the same to the appellant with an opportunity to them to contest the same.

Accordingly, we set aside the impugned order and remand the matter to Commissioner (Appeals) for fresh decision. Needless to say that appellant would be provided with all the above documentary evidences and would be given an opportunity to put forward their evidence/defence.

6. Stay petition as also appeal gets disposed of in the above manner. Misc. application also stands disposed of accordingly.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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