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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/1112/2011 - EX[DB] WITH E/S/1382/2011-EX Date **04/10/2011**

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

To :
M/S JAY BHARAT EXHAUST SYSTEMS LIMITED,
PLOT NO. 268, SECTOR-24, FARIDABAD, (HARYANA)

M/S JAY BHARAT EXHAUST SYSTEMS LIMITED, Appellant

Vs

C.E. DELHI IV **STAY ORDER NO. 1023/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.845/ 2011 EX[DB]** dated 28-9-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. DELHI IV
NEW CGO COMPLEX, NH-IV,
FARIDABAD, HARYANA 121001.

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 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
(Excise Appeal Branch)

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

Date of Hearing : 16.9.2011

Excise Stay No. 1382 of 2011 and Excise Appeal No. 1112 of 2011

[Arising out of Order-in-Appeal No. 04/CE/Appl/DLH-IV/2011 dated 4.2.2011 passed by the Commissioner of Central Excise (Appeals), Faridabad]

Coram:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

M/s Jay Bharat Exhaust Systems Ltd. Appellant

Vs.

CCE, Delhi-IV Respondent

Appearance:

Appeared for Appellant : Shri Amit Jain, Advocate
Appeared for Respondent : Shri N. Pathak, SDR

Coram:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

STAY order No. 1023/2011-EX
FINAL Order No. 845/2011-EX dated............

Per **Mathew John:**

As the entire duty of Rs.2,14,200/- stand deposited by the Appellant along with interest amount, we dispense with the condition of pre-deposit of penalty of Rs.2.00 lakhs. Requirement for pre-deposit of the further amounts due from the impugned order is, therefore, waived and the Appeals are admitted.

2. At this stage, the Counsel for the Appellant submits that the order of the Commissioner (Appeals) is to the effect that the Appeal was time-barred and for that reason only, he rejected the Appeal as is evident from the last sentence of para-5 of the impugned order. However, he invites our attention to the last sentence of para-2 of the impugned order where the Commissioner (Appeals) held the view that the Appeal was within time limit.

3. The facts of the case as appearing from records is that the Appellant had changed his address after issuance of Show Cause Notice and the position was informed to the Adjudicating Authority during Adjudication proceedings. The fact that their new address is at Plot No. 118, HSDIC Industrial Estate, Sector 59, Ballabagarh, Faridabad is noted in the opening paragraph of the Adjudicating order. However, it is seen that the order was despatched to their old address at 60, Hemkunt Chambers, 89, Nehru Place, New Delhi. It is the submission of the Appellant that they could not get order-in-original in time because of this confusion. We have not examined details of this contention. However, we note that having come to the conclusion that the Appeal was in time as recorded in para 2 of the order-in-appeal, the Commissioner (Appeals) could

not have rejected the Appeal as time-barred as recorded in para-5 of the Appeal. Therefore, it was incumbent on the Commissioner (Appeals) to examine the Appeal filed by the Appellant on merits and pass orders depending upon merits ~~on~~ of the claim rather than rejecting the Appeal as time-barred.

4. Therefore, we find it proper to set aside the impugned order and remand the matter to the Commissioner (Appeals) for decision on merits and we order accordingly. Thus the stay petition and Appeal are disposed of.

(Pronounced in Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM