17 TELEGRAM : CEGCANAL
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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/2184/2010-2185/2010 - EX[DB] Date **17/02/2012**
E/S/2071-2072/2010-EX

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

To :
M/S RAJ RATAN INDUSTRIES LTD
D-12,UPSIDC INDUSTRIAL AREA, SITE-11,
UNNAO(UP)

M/S RAJ RATAN INDUSTRIES LTD Appellant

Vs

C.C.E. KANPUR **STAY ORDER NO. 285-286/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.** A/178-179/ 2012 EX|DB| dated 15-2-12 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. KANPUR
117/7, SARVODAYA NAGAR,
KANPUR 208005.

2. Adv. / Consult SH. BIPIN GARG, ADV., B-1/1289-A, VASANT KUNJ, N. DELHI-70
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-3
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
14. JAI KISHAN KHATRI,DIRECTOR
M/S RAJ RATAN INDUSTRIES LTD, D-12,
UPSIDC INDUSTRIAL AREA, SITE-II, UNNAO

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

DIVISION BENCH
Court No.3

E/Stay/2071-72/2010 in Appeal No.E/2184-85/2010

(Arising out of OIA no.251-CE/APPL/KNP/2009/1085 dt.21.04.10 passed by the CCE(A), Kanpur)

Date of Hearing/Decision: 07.02.2012

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

M/s.Raj Ratan Industries Ltd. Appellant
Shri Jai Kishan Khatri, Director

Vs
CCE, Kanpur Respondent

Present for the Appellant: Shri Bipin Garg, Advocate
Present for the Respondent: Shri S.K.Panda, JCDR

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

STAY order No. 285-286/2012-EX(BR)
FINAL **ORDER NO.** A/178-179/2012-EX(BR)

PER: ARCHANA WADHWA

After hearing both sides, we find that the Commissioner (Appeals) has dismissed the appeal for the delay in filing the same. By referring to the provisions of section 35, he has observed that he has no power to condone the delay beyond the period of thirty days.

2. Both sides agree that the issue no more res integra and stands settled by various decisions of the larger bench of the Tribunal as also by the Hon'ble Delhi High Court and Supreme Court. The reference in this regard may be made to the Apex Court's decision in the case of Singh Enterprises vs. CCE, Jamshedpur-2008 (221) ELT 163 (SC).

3. Learned JCDR appearing for the Revenue submits that inasmuch as the issue stands decided against the appellant, the appeal should be dismissed.

4. We agree with the contention of the learned JCDR. Admittedly the appeal was filed before the Commissioner (Appeals) beyond the period of condonable limit and after a period of 233 days. The Commissioner (Appeals) has no power to condone the delay. As such, we find that the Commissioner (Appeals) has rightly dismissed the appeal on the point of limitation. We reject the appeal accordingly. The stay petitions as also appeals get disposed of.

(Pronounced in the open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(MATHEW JOHN)
MEMBER (TECHNICAL)

mk

FAX : 011-26108426 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
EXCISE APPEAL BRANCH

Dated: 03/07/2013

To

Appellant as per address in table below

Respondent as per address in table below

Misc Order No. MO/58145-58146/2013-EX[DB] dated 21/06/2013

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Asstt. Registrar(EXCISE Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	**E/ROM/55145/2013**	**E/2185/2010**	**JAI KISHAN KHATRI,DIRECTOR** M/s Raj Ratan Industries Ltd, D-12,UPSIDC Industrial Area, Site-II, UNNAO
2	**E/ROM/55146/2013**	**E/2184/2010**	**RAJ RATAN INDUSTRIES LTD** D-12,UPSIDC Industrial Area, Site-11, UNNAO(UP)
			Name and Address of Respondent
3			**C.C.E. KANPUR** 117/7, Sarvodaya Nagar, Kanpur 208005.

Other Appellants and Respondents as per Annexure

Copy To

4 Advocate(s) / Consultant(s):

SHRI PANKAJ BHATIA ADV.
C&B LAW CONSULTANT
A-446, DEFENCE COLONY
NEW DELHI-24.

5 Bar Association, CESTAT, Delhi

6 Director Publications, Customs, Excise. I.P. Estate, Delhi

7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 C.D.R. **15** Office Copy **16** Guard File **17** Second Folder

Asstt. Registrar(EXCISE Appeal Branch)

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

Excise Rom Application No. 55145-55146 of 2013
Excise Appeal No. 2184-2185 of 2010-EX[DB]

M/s. Raj Ratan Industries Ltd. — Appellant
Jai Kishan Khatri, Director

Vs.

Commissioner of Central Excise — Respondent
Kanpur

Appearance:
None for the Appellant
Shri V.P. Batra, DR for the Respondent

<u>CORAM</u>:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing/decision : 21.06.2013

ORDER NO .MO/ 58145-58146/2013-Cus(Br)

<u>Per Archana Wadhwa (for the Bench)</u>:

The present ROM applications stand filed in respect of final order No. A/178-179/12 Ex (Br) dated 7.2.12 vide which the ~~Revenue~~ Tribunal upheld the order of Commissioner (Appeals) rejecting the appeals filed before him on the point of limitation. The Tribunal by observing that the issue as to whether the Commissioner (Appeals) can condone the delay beyond the period of 30 days in terms of Section 35 stands settled against the assessee, the appeal filed by the applicant was rejected.

2. It is seen that the said order of the Tribunal was challenged by the applicant before the Hon'ble High Court of Allahabad, who vide their order dated 12.12.12, taking into consideration the submissions of the advocate appearing on behalf of the applicant observed that inasmuch as the Tribunal has not discussed the issue of service of order on the authorised representative of Shri Vijay Agarwal, granted liberty to the applicant to move an application for rectification of mistake within a period of 2 weeks from the date of passing of order. Though the Hon'ble High Court granted a period of 2 weeks to the applicant from 12.12.12 for moving an application for rectification of mistake, the said application stand filed by the applicant on 4.1.2013 i.e. beyond the period granted by the Hon'ble High Court. As such, on this ground itself, the applicant is liable to be rejected.

3. As regards the merits of the case, we find that Commissioner (Appeals) while rejecting the appeal on the point of limitation has observed as under:-

> *"I observed that in this case the impugned Order-in-Original was issued on 31.12.08 and dispatched on 18.02.09. On perusal of*

the letters of Shri Vijay Kumar Agarwal addressed to the Police Choki-in-charge, Unnao in which he stated that the above said Order-in-Original has been received from the Range office on 26.02.09, and same lost during the way to the office of the appellant No. 1. The appellant has procured the said Order-in-Original from the Revenue and filed the appeal on 17.12.09. In the appeal, the appellants have quoted in Form No EA-I the date of communication of the order as 21.10.09.

I find that the said impugned order has been served to Shri Vijay Kumar Agarwal, employee of the appellant No. 1 on 26.02.09 by the Range office, Unnao. The appellant has filed said appeal on 17.12.09 after expiry of prescribed limit of 60 days and for the reason of delay by 233 days, the appellant stated that the delay has been caused solely due to lost of impugned order. In support copy of F.I.R. regarding the lost of said order & copy of press release thereof in Daily News paper, has been submitted."

4. As is clear from the above, Commissioner (Appeals) has given categorical finding on the service of order-in-original and has also observed that Shri Vijay Kumar Agarwal, in his complaint to the Police Chowki has stated that order in original was received from the Range office on 26.2.09 and same was lost during the way to the office. It is only subsequently that the applicant procured a copy from the department on 21.10.09 and filed an appeal thereagainst on 17.12.09. If the order received by the applicant on

26.2.09 was lost during the way to the office, he could have asked for another copy within a period of 60 days during which he was to file an appeal against the said order. He only asked for another copy later on, which was served upon him on 21.10.09.

5. Learned advocate appearing for the applicant has submitted that Shri Vijay Agarwal was not authorised representative of the appellant company and it was only Shri Anurag Misra, Advocate who can be considered as an authorised representative and no service was effected on him. As such, he submits that it has to be considered that the impugned order of adjudicating authority was not served upon the applicant. However, on being questioned as to whether the name of any authorized representative was disclosed to the Revenue with a request to serve the copy to him, he very fairly admitted that no such name was disclosed to the Revenue. In terms of provisions of Section 37C of the Central Excise Act, the order is required to be served by tendering the same to the person for whom it is intended or his authorised agent. Admittedly, the order in original was intended for M/s. Raja Ratan Industries Ltd. The said M/s. Raj Ratan Industries Ltd. being the limited company, cannot receive the orders by himself and the same has to be received by an employee of the said limited company. ~~which~~ It is not the plea of the applicant that Shri Vijay Kumar Agarwal was not their employee

during the relevant period and has not received the order from Range office on 26.2.09. The contention of the learned advocate that authorised representative as mentioned in Section 37C refers to only advocate cannot be appreciated inasmuch as the service, as contemplated in the said section has to be to the ~~present~~ authorised representative, duly authorised to receive the orders. The advocate who is engaged for representing the limited company, in legal proceedings before the adjudicating authority cannot held to be authorised representative for the purpose of section 37C. In many cases, where the orders stand received by the advocate, but not by the assessee, or his authorised representative, the benefit of limitation stands given to the assessee by taking the date of receipt of order by him as the relevant date. As such, we are of the view that inasmuch as Shri Vijay Kumar Agarwal was the appellants' employee, who had gone to the Range office and the order was served upon him personally on 26.2.09, the appellants plea that the service of the impugned order cannot be held to be proper is liable to be rejected.

6. Apart from the above, we also find that the appellants advocate, at the time of appearance before the Tribunal on 7.2.2012 fairly agreed that there was delay of 233 days in filing the appeal before Commissioner (Appeals) and the legal issue that the Commissioner has no power to condone the huge

delay stand settled by various decisions of Hon'ble High Courts as also by Hon'ble Supreme Court. One such reference was also made to Hon'ble Supreme Court decision. As such, at this point of time, we are not in agreement with the submission of learned advocate, appearing before us today as he was not the advocate who caused appearance on 7.2.2012, when the other advocate appearing for the appellant agreed to the date of receipt of order by the assessee and consequent delay of 233 days in filing the appeal.

7. In view of the our foregoing discussions, we find no reason to interfere in the said order of the Tribunal inasmuch as there is no mistake. Accordingly, ROM application filed by the appellant is rejected.

(Operative part of the order pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

ss