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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. ST/1408/2011 - CU[DB]
ST/COD/341/11, ST/S/2951/11

Date **16/05/2012**

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

To :
M/S DIRECTORATE OF MARKETING & INSPECTION,
REGIONAL OFFICE: 58, MANSINGHPURA,
TONK ROAD, JAIPUR.
(THROUGH DY. AGRICULTURAL MARKETING ADVISOR.)

M/S DIRECTORATE OF MARKETING & INSPECTION, Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.**ST/A/377/ **2012 CU|DB|** dated 17.04.12 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Alongwith Stay Order No ST/S/536/12
Misc Order No ST/M/187/12

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.JASWINDER SINGH ,ADV
31, LAWYERS CHAMBERS,
DELHI HIGH COURT, N 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-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

Assistant Registrar
(Customs Appeal Branch)

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

Date of Hearing : 17.4.2012

Service Tax Condonation of Delay No. 341 of 2011, Stay No. 2951 of 2011 in Appeal No. 1408 of 2011

[Arising out of Order-in-Appeal No. 32(GRM) ST/JPR-I/2007 dated 13.2.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur]

For Approval & Signature :

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?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Directorate of Marketing & Inspection — Appellants

Vs.

CCE, Jaipur-I — Respondent

Appearance:

Appeared for Appellant : Shri Jaswinder Singh, Advocate
Appeared for Respondent : Shri K.P. Singh, A.R.

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

Stay order No. ST/S/536/12

Final Order No. ST/A/377/12 dated............

Misc order No. ST/M/187/12

Per **Archana Wadhwa** :

The application is for condonation of delay in filing the present appeal.

2. After hearing both the sides, we find that the impugned order was passed by Commissioner (Appeals) on 13.2.2007 whereas the appeal stands filed by the appellant on 17.8.2011 i.e. almost after a gap of three and a half year.

3. For better appreciation of the reasons advanced by the appellant for condoning the delay, we reproduce the relevant portion of the COD application.

> "3 That after passing of impugned order dated 13.2.2007 by the Commissioner (Appeal I) against the Department of Marketing and Inspection. The directorate requested CBEC vide their letter dated 12.4.2007 to advice Additional Commissioner Central

Excise and Custom, Jaipur for waiver of payment of penalty and fine as Service Tax was not applicable upon the DMI according to the instruction issued by CBEC New Delhi dated 18.12.2006.

4. That DMI thereafter sent three reminders to CBEC vide letter dated 04.06.2006, 25.06.2007 & 10.09.2007. CBEC then advised the DMI vide their letter dated 21.09.2007 to file an appeal against the impugned order, with the Commissioner of Central Excise (Appeal) at Jaipur. However, when the DMI met the office of Central Excise in November 2007, they were advised to file the appeal before CESTAT, Delhi.

5. That there after the DMI requested the Ministry of Agriculture vide their letter dated 11.12.2007 to consult the matter with the Department of Legal Affairs and make arrangement for nomination of Government Counsel for filing appeal before CESTAT. A reminder for the same was issued by DMI to the Ministry of Agriculture vide letter dated 11.01.2008. Thereafter the Ministry of Agriculture in consultation with the Department of Legal Affairs vide letter dated

11.01.2008 asked the DMI to file an appeal before the CESTAT.

6. That the DMI again made request to the Ministry of Agriculture vide letter dated 18.01.2008 for making arrangement for nomination of Govt. counsel through which, the DMI can file appeal before the CESTAT. Accordingly the case was processed and was sent to Shri Mukesh Anand, Senior Central Govt. Counsel vide communication dated 06.02.08, for appearing and contesting the matter before the CESTAT on behalf of DIM.

7. That there after the draft appeal was prepared by the counsel in consultation with the DMI and placed before the Head of the Department, DMI on 29.04.2008. Upon the approval by the H.O.D. the draft was sent to the Ministry of Agriculture on 06.05.2008 for getting it vetted from the Department of Legal Affairs.

8. That the vetted draft appeal was sent to the Ministry of Agriculture on 06.05.2008. Due to summer

vacation the vetted draft appeal could be sent to the Govt. Counsel for filing in July only.

9. That due to certain formalities and shortcomings in the vetted draft appeal like transaction, tying errors, Xerox of the copies and miscellaneous office and clerical works it could not be filed immediately after receiving the vetted draft appeal from the DMI.

10. That the vetted draft appeal was again sent to the DMI for rectification and removal of those shortcomings on 8.07.2008. It was again received by the counsel on 12.07.2008. However, certain annexure required to be annexed with the appeal were not provided to the counsel so the vetted appeal was again set to the Department with instructions to provide required annexure.

11. That the required annexure were provided by the Department to the counsel only on 16.07.2008. And immediately after getting the required Annexure, the same were annexed with the appeal and filed without further delay..

12. That Sh. Mukesh Anand, Senior Counsel Govt. Counsel, appointed in this case by Deptt. Of Legal

Affairs, vide letter dated 06.11.2008 requested Directorate of Marketing Inspection to get another Senior Central Govt. Counsel appointed for filing this appeal since he has been appointed as Senior Standing Counsel for Excise Department and therefore cannot file the appeal on behalf of DMI.

13. That Directorate of Marketing & Inspection vide letter dated 14.11.2008 requested Department of Agriculture & Cooperation to consult the Deptt. Of Legal Affairs & arrange to get nomination of one Senior Central Govt. counsel for filing the appeal.

14. That Deptt. Of Legal Affairs vide letter dated 12.01.2009 nominated Sh. Sanjay Katyal, Senior Central Govt. Counsel for filing the appeal.

15. That Sh. Sanjay Katyal while discussing this case with the office of Directorate of Marketing & Inspection advised to seek clarification from the Deptt. Of Revenue whether the OM No.255/1/2006-CX.4 dated 18.12.2006 issued by them is from prospective effect or retrospective effect.

16. The Directorate of Marketing and Inspection vide letter dated 06.03.2009 requested Deptt. Of Revenue

to clarify this so as to enable Directorate of Marketing & Inspection to file appeal. Subsequent reminders dated 20.04.2009, 17.6.2009, 30.8.2009, 23.9.2009, 19.1.2010, 5.5.2010 were issued to them since no reply was received from them.

17. That Deptt. Of Revenue vide letter dated 14.5.2010 intimating DMI that "Commissioner (Service Tax) was clarificatory in nature and, therefore, it states the legal position not only for the future but also for the relevant past period".

18. That Directorate of Marketing & Inspection vide letter dated 03.06.2010 requested Sanjay Katyal, Senior Govt. Standing Counsel to file the appeal as per clarification received from Deptt. Of Revenue. It was intimated orally to the bearer of the letter that Sh. Katyal will not be available for handling any matter outside the High Court of Delhi.

19. That Sh. Sachin Dutta, Senior Govt. Standing Counsel vide letter dated 05.08.2010 intimated that he will not defend the case.

20. That Directorate of Marketing & Inspection vide letter dated 14.12.2010 requested Deptt. Of Agriculture &

Cooperation to get nomination of a Senior Govt. Standing Counsel from Deptt. Of Legal Affairs for filing the appeal.

21. That it appears that the department of legal affairs nominated the Govt. Counsel for filing the present appeal. However, the appellant did not receive any letter regarding the said nomination. Thereafter, the Govt. counsel appointed in the matter contacted the Department of Agriculture for brief of the case and other particulars. That on 04.03.2011, a number of documents were supplied to the Govt. Counsel for filing the appeal. Again on 09.03.2011, certain other relevant documents were supplied to the counsel. That vide letter dt.17.03.2011, the relevant note sheets pertaining to the matter were also enclosed and sent to the Govt. Counsel. That the counsel concerned was briefed thoroughly on different dates thereafter as the present is a complicated matter. Thereafter the counsel prepared the appeal on 13.04.2011 which was signed by the competent authority on 20/7/11. The same was returned to the counsel on 20/7/11 and the present appeal was filed thereafter without any further delay.

22. That the delay occurred in the present case is neither wilful nor intentional but only due to the above mentioned facts and circumstances. That as public money is involved in the matter and the question of revenue arises the present delay in filing the present appeal is liable to be condoned in public interest

4. As is seen from the above narration of facts there is no dispute about the date of receipt of the impugned order by the appellant. Instead of filing the appeal before the Tribunal, the appellant went on knocking at ~~of~~ all the wrong doors. We find that preamble of the order clearly indicated that the said order is required to be challenged before the CESTAT, New Delhi.

5. From the above narration, we also note that CBEC, when approached by the appellant, directed them to file an appeal there against. Such clarification was given by them vide their letter dated 21.9.2007. Thereafter also the appellant did not file the appeal and was approaching their Ministry for appointment of the Government Counsels. It is also seen that a draft appeal was prepared on 6.5.2008,

but no action was taken thereon, on account of the summer vacation. Even after that the appeal was not filed immediately on account of annexure not being available and their being typing errors in the draft appeal. It is seen that the appellant provided requisite annexure to their counsel on 16.7.2008. Thereafter certain developments took place for the replacement of the senior counsel. After clarification and change of Advocates and in spite of a draft appeal having been prepared, it is seen that the appeal was not filed. It is clear from the last paragraph that the appeal was prepared on 13.4.2001 but was signed by the proper officer only on 20.7.2011. There is no explanation for such long gaps in between various actions of the applicant. The appreciation of the entire consequence of events, as reflected in the above application reflects upon the casual approach of the applicant and lapses on their part to take the matter seriously and to file the appeal within the limitation period. In spite of the fact that a draft appeal was vetted in or around July 2008, the actual filing of the same occurred on 17.8.2011. We find no justifiable reasons, to condone such a huge delay in filing the present appeal. Accordingly, the application is rejected.

6. Inasmuch as the delay in filing the appeal has not been condoned consequently stay petition as also appeal gets rejected on the point of limitation.

(Pronounced in Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

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