14

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

EXCISE APPEAL BRANCH

Appeal No. E/359 /2011 - EX[DB] WITH
E/COD/71/11& E/S/421/2011-EX

Date **01/02/2012**

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

To :
M/S KC FIBRES LIMITED,
(FORMERLY KNOWN AS M/S K.C. MACHINE WORKS LTD.)
BM-2A, DILKUSH INDUSTRIAL ESTATE, GT KARNAL ROAD, AZADPUR, NEW DELHI.
110033

M/S KC FIBRES LIMITED, Appellant

Vs

C.C.E. ROHTAK Respondent

MISC ORDER NO. 106/2012-EX
STAY ORDER NO. 135/2012-EX

I am directed to transmit herewith a certified copy of **Final order No. A/61/ 2012 EX[DB]** dated 30-1-12 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. ROHTAK
SCO NO.6 SECTOR 1, ROHTAK.

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-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
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

E/COD 71/11, E/Stay No.421/2011 in E/A No.359/2011

(Arising out of order in appeal No.274/AKG/RTK/05 dated 10.6.05 passed by the Commissioner of Customs & Central Excise(Appeals), Gurgaon)

Date of Hearing:19.1.2012

For Approval and signature:

Hon'ble Mr Archana Wadhwa, Member Judicial
Hon'ble Mr.Mathew John, Technical Member

1.	Whether Press Reporters may be allowed to see The order for publication as per Rule 27 of the CESTAT(Procedure) Rules, 1982?	Yes
2.	Whether it would 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 Department Authorities?	No

M/s K.C. Fibres Ltd — Appellants

Vs

CCE, Rohtak — Respondent

Appeared for the Appellant: Shri B.L. Narasimhan, Advocate
Shri Hemant Bajaj, Advocate

Appeared for the Respondent: Shri S.R. Meena, DR

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

MISC ORDER No. 166/2012-EX (BR)
STAY ORDER No. 135/2012-EX (BR)
FINAL ORDER No. A/61/2012-EX (BR)

Per Mathew John:

In this case, the appellants have filed an appeal against the order dated 10.6.05 passed by the Commissioner (Appeals). The appeal was filed on 7.2.2011. Thus prima facie, there is a delay of more than 6 years in filing the appeal. The case of the appellant is that they had got the order of the Commissioner (Appeals) only on 12.11.2010 and there is no delay on the part of the appellants in filing the appeal.

2. The facts of the case are that a show cause notice issued against the appellants was decided by the adjudicating authority in their favour by order dated 2.7.04 which was in their favour. Aggrieved by the order of the adjudicating authority, Revenue had filed appeal before the Commissioner (Appeals). The appellant appeared before the Commissioner (Appeals) and made their submissions but they did not get any order in the matter. Thereafter during 2010, they received a letter from the adjudicating authority stating that the matter is to be adjudicated afresh as per the guidelines given by the Commissioner (Appeals) in his order dated 10.6.05. Only then, they came to know about the order passed by the Commissioner (Appeals). Thereafter, they approached to the office of Commissioner (Appeals) and got a copy of the order in appeal. They found that though the Commissioner (Appeals) had remanded the matter for quantifying the amount due from them, that the Commissioner (Appeals) has not examined their main contention that the goods in question had not

become an excisable product at the stage at which duty was demanded. Further, he has denied benefit of Exemption Notification No. 5/99-CE and No. 6/2000-CE which the appellants were claiming. While they are not contesting the eligibility for the exemption under the said Notification, they went to contest the excisability of the product and that is the reason why they have filed this appeal.

3. To begin with, it is to be decided whether there is a delay in filing the appeal and if there is a delay, it is to be examined whether it can be condoned. What we notice is that this appellant has been promptly taking part in all the proceedings at lower levels and after the appeal has been remanded for denovo consideration, there has been considerable delay on the part of the adjudicating officer to take up the case for de-novo decision. The Revenue has reported that the order in appeal was dispatched by speed post but they had not proved delivery of the order to the appellant.

4. Considering the totality of the facts involved, we are inclined to accept the affidavit given by the appellant that they received the impugned order only on 12.11.2010 and that being the case, there is no delay involved. Even otherwise, we find that the matter already stands remanded to the adjudicating authority and no order has been passed in the de-novo proceedings. That being the case, it is proper that the entire matter is examined afresh including their contention regarding excisability of the product. So we condone the delay in filing the appeal. Further, the stay petition is infructuous because there is no quantified demand against the appellant and therefore, we admit the appeal and proceed to decide the appeal itself.

5. Since the appeal is already remanded by the Commissioner (Appeals) to the Adjudicating Authority to examine the question of limitation, we depose of this appeal by setting aside the order of the Commissioner (Appeals) and remanding the matter of exsiability of the product to be decided by the Adjudicating Authority afresh. Thus, the application for condonation of delay, stay petition and appeal are disposed of accordingly.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Member (Technical)
MPS*

(ARCHANA WADHWA)
Member (Judicial)