1H

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/1048/2011 - EX[DB]
E/S/1296/2011-EX

Date **03/02/2012**

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

To :
M/S KATHURIA & SONS,
55-B, RAMA ROAD,, DELHI.
110015

M/S KATHURIA & SONS, Appellant

Vs

C.C.E. DELHI I Respondent

STAY ORDER NO. 170/2012-EX

I am directed to transmit herewith a certified copy of **Final order No.A/82/ 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. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

2. Adv. / Consult SH. PRAVIN KUMAR, ADV.,
4/o **MR.RAJESH CHHIBBER**
FA/9, NEW KAVI NAGAR, GHAZIABAD

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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:24.01.2012
Date of decision:24.01.2012

Excise Stay No.1296 of 2011 and
In Appeal No.1048 of 2011

[Arising out of Order-in-Appeal No.248-CE/DLH/2010 dated 31.12.2010 passed by the Commissioner of Central Excise (Appeals), Delhi-I]

M/s. Kathuria & Sons Appellant

Vs.

CCE, Delhi-I Respondent

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Sahab Singh, Member (Technical)

1. Whether Press Reporters may be allowed to see 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.

Appearance: Rep. by Shri Pravin Kumar, Advocate for the appellant.
Rep. by Shri S.R. Meena, DR for the respondent.

CORAM: Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Sahab Singh, Member (Judicial)

STAY order No. 170/2012-EX (BR)
FINAL Order No. A/82/2012-EX (BR)/Dated:24.01.2012

Per Archana Wadhwa:

After dispensing with the condition of pre-deposit of duty of Rs.6,83,670/- and penalty of identical amount, we proceed to deal with the appeal itself inasmuch as the Commissioner (Appeals) has rejected the appeal on the ground of time bar.

2. After hearing both the sides, we find that the order impugned before the Commissioner (Appeals) was passed by the Dy. Commissioner in de novo proceedings, when the matter was earlier remanded by the Tribunal. The appellant submitted that they were under the bona fide belief that since the Tribunal has remanded the matter, the order of the Dy. Commissioner is required to be ~~followed~~ appealed again before the Tribunal only. Inasmuch as the period for filing the appeal before the Tribunal is 90days, they were in the process of ~~following~~ filing the same. However, subsequently, on contacting their advocate, they were advised to file the appeal before the Commissioner (Appeals). Accordingly, the appeal was immediately filed before the Commissioner (Appeals) with the condonation of delay application requesting him to condone the delay of 25 days in filing the appeal.

3. The Commissioner (Appeals) by observing that the above facts only indicate gross negligence on the part of the appellant and the reasons mentioned may not be accepted as sufficient and reasonable cause, declined

to condone the delay of 25 days in filing the appeal and accordingly, rejected the appeal on time bar.

4. We note that the grounds for seeking condonation of delay are reasonable and justifiable grounds and the assessee cannot be expected to be a legal expert...and can entertain a bona fide doubt that inasmuch as, the order of the Dy. Commissioner stands passed as per the directions of the Tribunal while remanding the matter, the same has to be challenged before the Tribunal only. As such, we are of the view that the delay in filing the appeal before the Commissioner (Appeals) is required to be condoned. We accordingly, direct the Commissioner (Appeals) to condone the delay and dispose of the appeal on merits, for which purpose, we remand the matter to him. Accordingly, the impugned order is set aside and the appeal is remanded to the Commissioner (Appeals) for decision on merits.

5. The stay petition as also appeal gets disposed of in the above manner.

Order dictated & pronounced in open court

[Archana Wadhwa]
Member (Judicial)

[Sahab Singh]
Member (Technical)

Ckp.