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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/2961/2011 - EX[DB]   Date **30/05/2012**
E/S/3807/2011-EX(DB)

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

To :
M/S GATES INDIA (P) LTD.

PLOT NO. 133 & 134, SECTOR-59, PART-II, HUDA
INDL. AREA, BALLABGARH, FARIDABAD
(HARYANA)
121004

M/S GATES INDIA (P) LTD.   Appellant

Vs

C.C.E. DELHI IV   **Stay order No. 864/2012-EX (DB)**   Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/632 2012 EX[DB]** dated 23/5/2012 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.J.P.KAUSHIK
A-14/3, SFS FLATS, SAKET, NEW DELHI-110017

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,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Court No.1

Excise Stay Application No.3807 of 2011 in Appeal No.2961 of 2011

(Arising out of Order-in-Appeal no.107/CE/Appl/DLH-IV/2011 dt.21.09.2011 passed by the CCE(A), Faridabad)

Date of Hearing/Decision: 23.05.2012

For approval and signature:
Hon'ble Mr.Justice Ajit Bharihoke, President
Hon'ble Mr.Rakesh Kumar, 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?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Gates India (P) Ltd. — Appellants

Vs.

CCE, Delhi-IV — Respondent

Shri J.P.Kaushik, Advocate for appellants

Shri S.K.Panda, AR for the department.

Coram: **Hon'ble Mr. Justice Ajit Bharihoke, President**
Hon'ble Mr.Rakesh Kumar, Member (Technical)

STAY order No. 864/2012-EX (BR)
FINAL order No. A/632/2012-EX (BR)

Per: Justice Ajit Bharihoke

The matter is listed for arguments on the stay petition. However, after going through the records and on hearing the parties, we are of the view that the appeal itself can be decided at this stage.

Accordingly, we proceed to decide the appeal with the consent of both sides.

2. The appellant is engaged in the manufacture of hose assembly which is excisable items. During the course of audit of records of the appellants, it was observed that the appellants had taken cenvat credit on the strength of bills of entry issued in the name of the appellant at different address, which according to the department, amounted to contravention of Rule 9 of Cenvat Credit Rules, 2004. Thus show cause notice raising the demand of Rs.46,12,692/- was served on the appellant in respect of period 2005-06 and 2006-07. The appellant responded to the show cause notice vide his letter dated 11.05.2010. The adjudicating authority, however, vide order in original dated 11.10.2010 disallowed the credit amounting to Rs.46,12,692/- and directed to recovery of the same alongwith interest from the appellant. Penalty of equal amount was also imposed on the appellant under Rule 15 of Cenvat Credit Rules, 2004 read with section 11AC of Central Excise Act, 1944.

3. The appellant preferred an appeal against the order in original, which was filed on 08.04.2011 after expiry of period of limitation. The Commissioner (Appeals) noting that the order in original was despatched on the correct address of the appellant by speed post on 19.10.2010, drew an inference that the appellant was served with the order in original in October, 2010 as such appeal having been filed after a period of five months from the date of serving of impugned order was barred by limitation. Accordingly, he dismissed the appeal on technical ground of limitation.

4. Shri J.P.Kaushik, learned Counsel for the appellant has submitted that the impugned order is not sustainable in law because the Commissioner (Appeals) has failed to appreciate that the appellant was not served with the copy of the order in original passed by the jurisdictional adjudicating authority. Learned Counsel further submits that section 37C (1) of Central Excise Act, 1944 provides for the manner in which department is required to serve assessee with any decision or order passed or summons or notice issued under the Act or the rules framed thereunder. Referring to the section 37 (c) (2) learned Counsel submits that this provision provides if the decision or orders of any authority is tendered or delivered by post or a copy thereof is affixed at the address of the assessee in the manner provided in sub section (1) of Section 37C there shall be a presumption of service. In the instant case, it is not the case of the department that the copy of the order in original was either tendered to the assessee or affixed at his residential address. It is contended that in the instant case, the stand of the department is that the copy of the order in original was sent to the appellant by speed post, which is not a recognised mode of service as provided under section 37C (1) (c) of the Act. As such, the Commissioner (Appeals) was wrong in raising inference that the appellant was served with copy of the order in original in October, 2010 to come to the conclusion that the appeal filed by the respondent was time barred. In support of his contention, learned Counsel for the appellant has relied upon the judgement of the Bombay High Court in the matter of Bombay High Court in the matter of Amidev Agro Care Pvt.Ltd. vs. Union of India-2012 (26) STR 299 (Bom.).

5. Shri S.K.Panda, learned AR for the department, on the other hand, has argued in support of the impugned order. He has relied upon the judgement of the Punjab and Haryana High Court in the matter CCE, Ludhiana vs. Mohan Bottling Co. (P) Ltd.-2010 (255) ELT 321 (P&H) and submitted that since the order in original was despatched through speed post at the correct address of the appellant there is presumption of service of attached unless there are circumstances to show that the order could not have been served on the appellant.

6. We have considered the rival contentions and perused the records. On perusal of the judgement of the Bombay High Court in the matter of Amidev Agro Care Pvt.Ltd., supra we find that the Bombay High Court in the above case have considered the judgement of the Punjab and Haryana High Court in the matter CCE, Ludhiana vs. Mohan Bottling Co. (P) Ltd. and held that the department is under legal obligation to comply with mandate of section 37C of Central Excise Act, 1944 which deals with service of decisions, orders, summons etc. on the parties. Relevant observation of the Bombay High Court is reproduced thus:-

"5. As per section 37C(1) (a), it was mandatory on the part of the Revenue to serve a copy of the order of Commissioner of Central Excise (Appeals) by registered post with acknowledgement due to the assessee. Admittedly, in the present case, a copy of the order has not been sent by registered post. In these circumstances, it could not be said that the requirement of section 37C has been complied with. The CESTAT was wrong in relying upon the judgement of P & H High Court in the case of Mohan Bottling Company (P) Ltd.

(supra), as in that case a copy of the order was sent by registered post, whereas in the present case, the order is said to have been sent by speed post and there is no evidence of tendering the decision to the assessee.

6. In these circumstances, in our opinion the decision of the CESTAT that the requirements of Section 37C have been complied with cannot be accepted. As per section 37C(1) (a) of the Central Excise Act, 1944, it was obligatory on the part of the Revenue, either to tender a copy of the decision to the assessee or to sent it by registered post with acknowledgement due to the assessee or its authorised agent. In the present case, neither of the above have been complied with by the Revenue. Accordingly, the contention of the assessee that a copy of the order of Commissioner of Central Excise (Appeals) was received for the first time on 26th February, 2010 would have to be accepted. Consequently, the decision of the CESTAT that the appeal filed by the assessee was time-barred cannot be sustained."

6. On reading of the above, it is apparent that as per section 37C (1) (a), it was obligatory on the part of the Revenue either to tender a copy of the decision of the adjudicating authority to the assessee or to sent it by registered post with acknowledgement due to the assessee or its authorised agent. In this case, registered AD post mode was not adopted by the department for serving the appellant with copy of the order in original. There is no evidence on records to show that the copy of the order in original was physically tendered to the appellant or his authorised agent. Thus, in our considered view, it is clear case in which mandate of section 37C (1) (a) have not been followed by the Revenue. As such, there can be no presumption of service of order in original sent to the appellant through speed post. That being the case, the order of the Commissioner (Appeals) which

is based upon presumption of service of order sent by speed post cannot be sustained. Accordingly, the appeal is accepted and the matter is remanded back to the Commissioner (Appeals) to decide the issue in the accordance with law.

7. The stay petition as also appeal is disposed of in the above terms.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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