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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/3981/2010 - EX[DB] Date **27/04/2012**
E/S/3852/2010-EX

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

To :
M/S MOHAN JUTE MILLS LIMITED,
SARANGARH ROAD, RAIGARH.
496004

**M/S MOHAN JUTE MILLS LIMITED,** Appellant

Vs

**C.C.E. RAIPUR** **STAY ORDER NO. 707/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/470 2012 EX|DB|** dated 24-4-12 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. RAIPUR**
CENTRAL EXCISE BUILDING,
DHAMTARI ROAD, TIKRAPARA,
RAIPUR 492001.

2. Adv. / Consult
**MR.BIPIN GARG**
B-1/1289,A-VASANT KUNJ, NEW 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
(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.3852 of 2010 in Excise Appeal No.3981 of 2010

(Arising out of OIA No.225/RPR-I/2010 dt.27.7.10 passed by the CCE(A), Raipur)

**Date of Hearing/Decision: 24.04.2012**

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? | |

M/s.Mohan Jute Mills Ltd. Appellants

Vs.

CCE, Raipur Respondent

Present: Shri Bipin Garg, Advocate for the Appellant
Present Shri I.Baig, AR

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

STAY ORDER No. 707/2012-EX(BR)
FINAL ORDER No. A/470/2012-EX(BR)

Per: Justice Ajit Bharihoke

After dispensing with condition of pre-deposit of duty and penalty, we proceed to decide the appeal itself with the consent of both sides.

2. This appeal has been directed against the Order-in-Appeal No.225/RPR-I/2010 dt.27.7.2010 passed by the Commissioner (Appeals), Central Excise, Raipur, whereby he dismissed the appeal filed by the appellant/assessee against the Order-in-Original passed by the jurisdictional officer on the ground of limitation.

3. Relevant part of the impugned order reads thus:-

"*5. On going through case records, I find that the Appellant has preferred this Appeal showing the date of communication of Order as 09.01.2010 whereas the impugned order was passed on 31.08.2009 and was received in the jurisdictional Range-Office on 04.09.2009. The appellant has submitted the photocopy of attested copy of the impugned order alongwith a copy of letter dated, 05.01.2010 of the Superintendent, Central Excise Range-Office. The appellant has not put forth any reason for non-receiving of the impugned order (Original Copy) by them. Thus under this circumstance, the fact emerged is that, the appellant has intentionally did not disclosed and mention the correct date of receiving of Order-in-Original. Hence, the date of communication of order/decision as shown by the appellant is not acceptable. Therefore, I reach at the conclusion that, the Appeal filed is barred by the limitation of time. Held accordingly.*"

4. Shri Bipin Garg, learned Counsel submits that impugned order of the Commissioner (Appeals) is not sustainable in law as it is based on presumption and not on concrete evidence. He has urged us to accept the appeal, set th ~~settin~~g aside the impugned order and remand the matter back to the Commissioner (Appeals) for deciding this issue afresh.

5. Shri I.Baig, learend AR for the Revenue has not controverted the submission made by the learned Counsel for the appellant and has fairly stated that the department has no objection if the impugned

order is set aside and the matter is remanded back for deciding the appeal on merits in accordance with law.

6. on perusal of the impugned order, it is apparent that the Commissioner (Appeals) has not given any finding on the date on which the order under appeal was received by the appellant, therefore, we find difficult to sustain the impugned order. Accordingly, we accept the appeal and set aside the impugned order and remand the matter remanded to the Commissioner (Appeals), Central Excise, Raipur with the direction to dispose of the appeal on merits after giving due opportunity of hearing to the appellant preferable within six months.

6. The stay application as also the appeal is disposed of in the above terms.

**(Justice Ajit Bharihoke)**
**President**

**(Rakesh Kumar)**
**Member (Technical)**

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