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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/2927/2011-2931/2011 - EX[DB] Date **27/04/2012**
E/COD/456-438/2011-EX

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

To :
C.C.E. KANPUR

117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S MANTORA AGRO INDUSTRIES P.LTD **MISC ORDER NO. 434-438/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/474-478 2012 EX|DB|** dated 20-4-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S MANTORA AGRO INDUSTRIES P.LTD
CHIRANA ROAD, BISAYAKPUR,
RANIA, KANPUR(DEHAT)

2. Adv. / Consult SH. VINA GARG, ADV,
FLAT NO. H-1, FIRST FLOOR,
RADHEY APARTMENT,
7/116-A, SWAROOP NAGAR, KANPUR-2
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)

P.T.O.-2,

14. M/S DINESH OIL LTD
D-12,13&14, SITE III, PANKI, KANPUR.

15. M/S KANPUR EDIBLES P.LTD
RANIA, KANPUR(DEHAT)

16. M/S VAIBHAV EDIBLES P.LTD
LATA MUBARAKPUR, RANIA, KANPUR(DEHAT)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 20.04.2012

Excise COD Application Nos. 456 to 460 of 2011 in
Excise Appeal Nos. 2927 to 2931 of 2011

CCE, Kanpur Appellant

Vs.

M/s Mantors Agro Inds. Pvt. Ltd.
M/s Kanpur Edibles Pvt. Ltd.
M/s Vaibhav Edibles Pvt. Ltd.
M/s Dinesh Oil Ltd. Respondent

MISC ORDER NO 434-438/2012 - Ex (BR)
FINAL ORDER No. A/474-478/2012 - Ex (BR)

Present Sh. Bharat Bhushan, AR for the appellant.
Present Sh. Vinay Garg, Advocate for the respondents.

Vide this order we propose to dispose five similar applications for condonation of delay in filing of appeal originating from the same order being Order in Appeal No. 183 to 187/CE/APPL/KNP/2010 dated 29.03.2010 passed by the Commissioner (Appeals), Kanpur in case of Mentor Agro Industries Pvt. Ltd. and others. Case of the department is that order-in-appeal was received in Commissionerate on 08.10.2010 and the appeal should have been filed on or before 07.07.2010. However, the Committee of Commissioners in view of judgement of the Tribunal in case of Priyanka Refineries Ltd. vs. CCE, Hyderabad reported in 2010 (349) ELT 70 which attain finality as special leave petition filed by the department against the order of Tribunal in the same matter was dismissed, had accepted the impugned order of the Commissioner (Appeals).

2. It is contended by the learned Counsel for the appellants that subsequent to the decision taken by the Committee of Commissioners on 28.6.2010, Principal Bench of this Court in the case of CCE, Jalandhar vs. A.G. Flats Ltd. and Others vide final order dated 25.07.2011 while observing that dismissal of an appeal

summarily without giving reason does not lay down any law took a view different from the view taken in the case of M/s Priyanka Refineries Ltd. (supra). Since the facts of this case are similar to the facts of the case of CCE, Jalandhar vs. A.G. Flats Ltd. and Others, the department decided to file the appeal. It is submitted because of those extra ordinary circumstances delay of 1½ years occurred in filing of appeal.

3. Sh. Vinay Garg, Ld. Advocate has strongly opposed the application. He submits that in order to succeed the department has to show a sufficient cause which prevented the department from filing appeal against the impugned order of Commissioner (Appeals). The appellant cannot take shelter subsequent favourable judgement of the Tribunal to justify the delay in filing of appeal.

4. We have considered the rival contention. Only ground taken to justify the delay in filing of appeal is that recently Principal Bench of the Tribunal has rendered a decision in the matter of CCE, Jalandhar vs. A.G. Flats Ltd. and Others vide order dated 25.07.2011 which runs counter to the impugned order. This subsequent event in our considered view cannot be taken sufficient view to reopen the proceedings after a delay of almost 550 days. No other cause has been shown by the appellant. Therefore, the applications for condonation of delay are dismissed. Subsequently the COD Applications No. 456 – 460 of 2011 are dismissed as time bar.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant