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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

Date 17/05/2012

Appeal No. E/67 /2012-78 /2012 - EX[DB]
E/COD/13-21/12-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 VAIBHAV EDIBLES PVT. LTD. **MISC ORDER NO. 534-545/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/572-583 2012 EX|DB|** dated 09-5-12 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 VAIBHAV EDIBLES PVT. LTD.
LATA MUBARAKPUR, RANIA,
KANPUR (DEHAT).

2. Adv. / Consult SH. AMIT AWASTHI, ADV., FLAT NO. H-1, FIRST FLOOR, RADHEY APARTMENT, 7/116-A, SWAROOP NAGAR, KANPUR
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 MANTORA AGRO INDUSTRIES PVT. LTD.
CHIRANA ROAD, BISAYAKPUR, RANIA, KANPUR (DEHAT)

15. SHRI AKHIL GUPTA, DIRECTOR OF
M/S VAIBHAV EDIBLES PVT. LTD., LATA MUBARAKPUR, RANIA, KANPUR (DEHAT).

16. M/S MANTORA OIL PRODUCTS PVT. LTD.
CHIRANA ROAD, BISAYAKPUR, RANIA, KANPUR (DEHAT)

17. M/S R. P. EDIBLE OILS LTD.
RANIA, KANPUR (DEHAT)

18. SHRI RATAN GUPTA, PLANT INCHARGE OF
M/S MANTORA OIL PRODUCTS PVT. LTD., CHIRANA ROAD, BISAYAKPUR, RANIA, KANPUR (DEHAT)

19. M/S KANPUR EDIBLES PVT. LTD.
RANIA, KANPUR (DEHAT)

20. SHRI RAKESH AGRAWAL, DIRECTOR OF
M/S R. P. EDIBLE OILS LTD., RANIA, KANPUR (DEHAT)

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

22. SHRI DINESH ARORA, MANAGING DIRECTOR OF
M/S DINESH OIL LTD.
D-12, 13 & 14, SITE-III, PANKI, KANPUR.

23. SHRI MANOJ GUPTA, DIRECTOR OF
M/S KANPUR EDIBLES PVT. LTD, RANIA, KANPUR (DEHAT)

24. SHRI SIDDHARTH GUPTA, DIRECTOR OF
M/S MANTORA AGRO INDUSTRIES PVT. LTD. CHIRANA ROAD, BISAYAKPUR, RANIA, KANPUR (DEHAT)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING/DECISION : 09/05/2012.

Excise COD Application No. 13-24 of 2012

[Arising out of the Order-in-Appeal No. 201-212/CE/APPL/KNP/2010 dated 07/04/2010 passed by The Commissioner (Appeals), Customs & Central Excise, Kanpur.]

Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri 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 would 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 Department Authorities? :

CCE, Kanpur — Appellant

Versus

M/s Vaibhav Edibles Pvt. Ltd.]
Shri Akhil Gupta, Director]
M/s Dinesh Oil Ltd.]
Shri Dinesh Arora, M.D.]
M/s Kanpur Edibles Pvt. Ltd.]
Shri Manoj Gupta, Director] Respondents
M/s R.P. Edible Oils Ltd.]
Shri Rakesh Agarwal, Director]
M/s Mantora Oil Products P. Ltd.]
Shri Ratan Gupta, Plant Incharge]
M/s Mantora Agro Industries P. Ltd.]
Shri Siddharth Gupta, Director]

Appearance

Shri Nagesh Pathak, Authorized Representative (DR) – for the Appellant.

Shri Amit Awasthi, Advocate – for the Respondents.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

Misc order No. 534 - 545/2012 - Ex(DB)

Final Order No. A/572-583/2012-Ex(DB)

Shri Justice Ajit Bharihoke :-

Vide this order we propose to dispose 12 similar applications for condonation of delay of almost one and a half year in filing of the respective appeals originating from the common order of Commissioner (Appeals) dated 1st of April 2010.

2. The cause shown for delay in filing of above appeals by the Department is that the impugned order was passed by the Commissioner (Appeals) following the ratio of the judgment of the Tribunal in the matter of *CCE, Hyderabad vs. Priyanka Refineries Ltd.* reported in *2010 (249) E.L.T. 70 (Tri. - Bang.)*, it is alleged in the applications that the department had preferred civil appeals No. 218-220 of 2010 against the judgment of the Tribunal in *CCE, Hyderabad vs. Priyanka Refineries Ltd.* (supra), the SLP, however, was dismissed by the Hon'ble Supreme Court on 7th of January 2010. When the matter was considered by the Committee of Commissioners, the Committee decided not to file appeal against the impugned order for the reason that the order in *CCE, Hyderabad vs. Priyanka Refineries Ltd.* (supra) was confirmed by the Hon'ble Supreme Court. It is further alleged

that subsequently in the matter of *CCE, Jallandhar vs. A.G. Flats Ltd.*, the Tribunal vide final order No. 648-661 of 2011-EX dated 25/7/11 and also reported in *2012 (277) E.L.T. 96 (Tri. - Del.)* took the view that dismissal of civil appeals In-Limine by the Hon'ble Supreme Court without adverting to the facts and without giving reasons could not be taken as the law laid down by Hon'ble Supreme Court. As such, in view of the clarification of legal position by the Tribunal in the matter of *CCE, Jallandhar vs. A.G. Flats Ltd.* (supra), the Department has decided to prefer appeal against the impugned order. It is submitted that the delay in filing of appeal has resulted because of mistaken interpretation of the dismissal of Civil appeal against the order in *CCE, Hyderabad vs. Priyanka Refineries Ltd.* (supra).

3. Shri Nagesh Pathak, learned AR for the Department submits that the delay in filing of the appeals was unintentional and it resulted because of mistaken view of the judgment of Hon'ble Supreme Court in civil appeals preferred against the order of the Tribunal in *CCE, Hyderabad vs. Priyanka Refineries Ltd.* (supra).

4. Learned Shri Amit Awasthi, Counsel for the respondents has refuted the contention of the appellant. He submits that once the Committee of Commissioners had decided not to prefer appeal against the impugned order, the order stood accepted and attained finality. Therefore, just because of view taken by the Tribunal in its subsequent order in the matter of *CCE, Jallandhar*

vs. A.G. Flats Ltd. (supra), the Department cannot be permitted to reopen the appeals. Learned counsel submits that the Tribunal in some earlier matters relating to M/s Mantora Agro Industries Pvt. Ltd. and others vide miscellaneous order No. 431-438 of 2012 – EX has dismissed the applications of the Department for condonation of delay moved on similar ground. Respondents have thus pressed for dismissal of applications for condonation of delay.

5. We have considered the rival contentions and perused the record. The cause shown for delay is that the Committee of Commissioners took a mistaken view of the law that the judgment of Hon'ble Supreme Court dismissing the civil appeal did lay down the law and confirmed the legal position settled by the Tribunal in the case of *CCE, Hyderabad vs. Priyanka Refineries Ltd.* (supra). This reason in our considered view is not sufficient to condone the delay for the reason that Committee of Commissioners has accepted the impugned orders of Appellate Commissioner after considering all the aspects of the matter. Therefore, the order has attend finality, as such, the issue cannot be reopened only because in a subsequent judgment, Tribunal has observed that In-limine dismissal of appeal by the Hon'ble Supreme Court does not lay down any law. In view of the discussion above, we do not find any merit in the applications. The applications are accordingly dismissed.

Excise Appeal No. 67-78 of 2012

In view of dismissal of application for condonation of delay, the appeals are dismissed as time barred.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

PK