**REGISTERED / AD**

**FAX : 011-26108426**

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066**
**EXCISE APPEAL BRANCH**

Dated: **06/12/2012**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/1354/2012-EX[DB]**, Stay Order No. **SO/1950/2012** and dated **22/11/2012**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

**Asstt. Registrar(EXCISE Appeal Branch)**

| | Application | Appeal | Name and Address of Appellant |
|---|---|---|---|
| 1 | E/Stay/3320/2012 | E/2620/2012 | **Sharda Forging And Stamping Pvt Ltd**<br>Plot No 64, Site-iv Indl Area, Sahibabad, Ghaziabad(up) |

Name and Address of Respondent

2 **C.C.E. & S.T.-Ghaziabad**
202...WING A C.G.O. COMPLEX-II,
KAMLA NEHRU NAGAR,
GHAZIABAD,
UTTAR PRADESH
201002

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**Copy To**
3Advocate(s) / Consultant(s):

**Prabhat Kumar**
**B-51(BASEMENT), SARVODAYA ENCLAVE**
**NEAR MOTHER INTERNATIONAL SCHOOL**
**NEW DELHI**
**DELHI**

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4 Bar Association, CESTAT, Delhi

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 C.D.R. 14 Office Copy 15 Guard File

**Asstt. Registrar(EXCISE Appeal Branch)**

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

Date of hearing/ Decision:22.11.2012

| | | |
|---|---|---|
| 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? | |

Excise Stay Application No.E/Stay 3320 of 2012 in
Appeal No.E/2620 of 2012

(Arising out of Order-in-Appeal No.E/111-CE/GZB/2012 dated 31.05.2012 passed by the Commissioner (Appeals), Central Excise, Ghaziabad (U.P.)).

M/s.Sharda Forging & Stamping (P) Ltd. ...Appellant

Vs.

CCE,Ghaziabad (U.P.) ...Respondent

Appearance: Shri Prabhat Kumar, Advocate for the appellant.
Shri M.S. Negi, DR for the respondent.

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

STAY order No. 1950/2012-EX (BR)
FINAL Order No. A/1354/2012-EX (BR)

**Per Rakesh Kumar:**

In this case, the Original Adjudicating Authority vide order-in-original dated 30.04.2010 had confirmed the duty demand of Rs.4,14,408/- against the appellant along with interest and besides this, imposed penalty of equal amount under Rule 15 of the Cenvat Credit Rules, 2004 and also imposed penalty of Rs.10,000/- on Shri Anirudh Sharda, Director of the appellant company. The appellant received this order of the Asstt. Commissioner on 14.02.2012 and there is no dispute about this. The appellant however filed appeal on 9.5.2012 before the Commissioner (Appeals). The Commissioner (Appeals) vide order in appeal dated 31.05.2012 has dismissed the appeal as time barred as there was delay of 25 days beyond the prescribed limitation period of 60 days for filing the appeal. Against this order of the Commissioner (Appeals), this appeal has been filed along with stay application.

2. Though this matter is listed for hearing of stay application only, after hearing this matter for sometime, we were of the view that the matter can be taken up for final disposal . Accordingly, after waiving the requirement of pre-deposit, matter was heard for final disposal.

3. Shri Prabhat Kumar, ld. Advocate, pleaded that copy of the order-in-original was not served on the appellant. He came to know of the order for the first time,

only when he received a letter addressed to him by the Superintendent of Central Excise calling upon him to clear the dues as confirmed by order-in-original. On receipt of this letter, he requested the department to at least serve a copy of the original-in-original so that he may go through the same and file appeal if necessary. Pursuant to this demand, the department supplied him as un-attested copy of the order on 14.02.2012. Since the copy of the order was un-attested, the appellant again requested the department to supply him with an attested true copy which was supplied to him on 15.3.2012 and if the aforesaid date as the date of communication of the order, the appeal is within limitation. It is further submitted that otherwise also, the Commissioner (Appeals) failed to appreciate that the delay in filing of the appeal has occurred because the Appellant was under mistaken belief, that he could prefer an appeal only after the receipt of the certified copy. Thus it is submitted that the impugned order dismissing the appeal on the plea of the limitation is not sustainable and is liable to be set aside.

4. Shri M.S. Negi, ld. AR for the Revenue, on the contrary has argued that admittedly that copy of the order-in-original was received by the appellant on 14.2.2012 and therefore, the period of limitation has to be counted for the said date and the Commissioner (Appeals) has rightly dismissed the appeal as time barred.

5. We have carefully considered the submissions and perused the records. Going by the submissions as narrated above, we are of the view that this is a case of mistaken interpretation of provisions of law for which the appellant cannot be penalized and accordingly we condone the delay in filing the appeal and set aside the impugned order of the Commissioner (Appeals). The matter is remitted back to the Commissioner (Appeals) with the directions that he shall decide the appeal on merits after giving due hearing to both the sides. The appeal as also stay applications stand disposed of.

( Justice Ajit Bharihoke )
President

(Rakesh Kumar )
Member (Technical)

Ckp.