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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. ST/692 /2011 - CU[DB]
ST/S/1353/11

Date **13/01/2012**

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

To :
SUKHWINDER SINGH,PROP

M/S SANT PREM SINGH MONEY TRANSFER
COLLEGE ROAD, V.P.O BEGOWAL, DISTT-
KAPURTHALA(PB)

SUKHWINDER SINGH,PROP Appellant

Vs

C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/27/ 2012 CU[DB]** Dated 14.12.11 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating t Service Tax**

Alongwith Stay Order No ST/A/67/12

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F'
BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

2. Adv. / Consult
MR.HARVINDER SINGH,ADV
34/10, RAJ NAGAR, KAPURTHALA ROAD,
SUNNY BISTER BHANDAR, JALANDHAR.

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
(Customs Appeal Branch)

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. III

DATE OF HEARING : 14/12/2011.
DATE OF DECISION : 14/12/2011.

Service Tax Stay appeal No. 1353 of 2011 in Appeal No. 692 of 2011

Shri Sukhwinder Singh, Prop.] Appellants
M/s Sant Prem Singh Money Transfer]

Versus

CCE, Ludhiana Respondent

[Arising out of the Order-in-Appeal No. 34/CE/Ldh/2011 dated 31/01/2011 passed by The Commissioner (Appeals), Customs & Central Excise, Chandigarh.]

For Approval and signature :
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
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?	:	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3.	Whether their Lordships wish to see the fair copy of the order?	:	Seen
4.	Whether order is to be circulated to the Department Authorities?	:	Yes

Appearance

Shri Harvinder Singh, Advocate – for the Appellants.

Shri K.P. SINGH, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

Stay order No. ST/S/67/12-Cus
Final Order No. ST/A/27/12-Cus Dated : ____________

Per. Archana Wadhwa :-

After hearing both the sides, we find that Commissioner (Appeals) has rejected the appeal on the ground of time bar by observing that the appeals stand filed much after the condonable period of three months. On the other hand it is the appellant's contention that the impugned order passed by the lower authorities was received by them subsequently and the Commissioner (Appeals) has gone by the fact that the same was sent by speed post and there is deemed service of the order on the appellant.

2. While we find that there is no dispute on the legal proposition as it stands settled by plethora of judgments including the Hon'ble Supreme Court decision in the case of **M/s Singh Enterprises vs. CCE, Jamshedpur** reported in **2008 (221) E.L.T. 163 (S.C.)**, we note that the dispute in the present appeal is as regards the factual position. Whereas the Commissioner (Appeals) has gone by the fact that order-in-original was dispatched on 2/1/08 and as per the provisions of Section 37C of the Central Excise Act, 1944 is deemed to have been served on the person included, the appellants have contested the actual date of receipt of the said order. Though we note there is Larger Bench decision of the Tribunal in the **Margra Industries Ltd. vs. CC, New Delhi** reported in **2006 (202) E.L.T. 244 (Tri. – LB)** laying down that it is the actual date of receipt of the order which is relevant and mere dispatch of the

adjudication order by speed post/registered post would not amount to valid service in the absence of proof of actual delivery, Commissioner (Appeals) has chosen not to rely upon the said judgment but to follow another division bench decision in the case of S.A. Plywood Industries. However, as the Larger Bench decision are binding on the Division Bench and judicial discipline requires the lower authorities to follow the decision of the Larger Benches, we are of the view that the law declared by the Larger Bench was required to be followed by Commissioner (Appeals) that brings us to the dispute of actual date of receipt of order passed by the Adjudicating Authority.

3. At this stage, we note that the fact of the actual date of service of the impugned order can be established by either side by retrieving information from the Postal Authorities, which can be easily done under the RTI Act. As such, we set aside the impugned order and remand the matter to Commissioner (Appeals) for fresh decision on the above disputed issue, after affording a reasonable opportunity of personal hearing to the appellant.

(Operative part of the order pronounced in the open court.)

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

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