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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

STAY Application No. : E/Stay/3418/2011
Appeal No. : E/2624/2011-EX[DB]

Dated: **03/08/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
ASHOK & COMPANY PAN BAHAR LIMITED.
20, SHIVAJI MARG, NEW DELHI.

ASHOK & COMPANY PAN BAHAR LIMITED. (Appellant)

VS

C.C.E. DELHI I (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/897/2012-EX[DB]**, Stay Order No. **SO/1200/2012** dated **30/07/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. **Respondent**
C.C.E. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

2. **Advocate(s) / Consultant(s):**
Manish Pushkarana
C-2/119, PRINTERS APPTS, SECTOR-13, ROHINI, DELHI-85

3. **C.D.R**
4. Bar Association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publications 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. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

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

Date of hearing/decision: 30.07.2012

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. 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?	

Excise Appeal No. 2624 of 2011 and
Excise Stay No. 3418 of 2011

(Arising our of order-in-appeal No. 65/CE/DLH/2011 dated 17.08.2011 passed by the Commissioner (Appeals), Central Excise, Delhi-I).

M/s Ashok & Company Pan Bahar Ltd. Appellants

Vs.

CCE, New Delhi Respondent

Present Sh. Manish Pushkarna, Advocate for the appellants.
Present Sh. M.S. Negi, AR for the respondent.

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

STAY ORDER NO. 1280/2012-EX(BR)
FINAL ORDER NO. A/897/2012-EX(BR)

Per: Rakesh Kumar (Oral)

This appeal is directed against the order-in-appeal No. 65/CE/DLH/2011 dated 17.08.2011 whereby the Commissioner (Appeals) dismissed the appeal preferred by the appellant-assessee against the order-in-original confirming the duty demand to the tune of Rs.39,74,838/- against the appellant with interest and also imposed penalty of equal amount.

2. Briefly stated, facts relevant for the disposal of this appeal are that feeling aggrieved of the order-in-original the appellant preferred an appeal before the Commissioner (Appeals). The appeal however, was filed with a delay of seven days after the expiry of prescribed period of sixty days limitation from the date of service of the order-in-original on the appellant. Thus, the appellant had applied for condonation of delay under proviso to Section 35(1) of the Central Excise Act which authorizes the Commissioner to permit the party to file the appeal within further period of thirty days after the expiry of the initial period of limitation if the party concerned is able to show sufficient cause for the delay. The appellant in support of the request for condonation of delay took the plea that he was prevented from filing the appeal in time because his Counsel was suffering from viral fever. The aforesaid plea did not find favour with the Commissioner (Appeals) as such he declined the request to condone the delay and dismissed the appeal as time barred without adverting to the merits of the case.

3. Sh. Manish Pushkarna, ld. Advocate has pleaded that the Commissioner (Appeals) has committed a grave error in law in refusing to accept the plea of the appellant with illness of his Counsel prevented him from filing the appeal in time. Ld. Counsel submitted that it is well settled that while dealing with the application for condonation of delay the Courts/ adjudicating authorities are supposed to take liberal view and ordinarily the

door of justice should not be shut on the litigant on technical pleas unless the party concern is shown to be grossly negligent in exercising his legal rights.

4. Shri M.S. Negi, ld. AR for the respondent on the contrary has contended that the Commissioner (Appeals) has rightly declined to condone the delay in filing of appeal for the reason that the appellant failed to produce any documentary evidence to substantiate the plea that his Counsel was prevented by viral fever to file the appeal within limitation.

5. We have considered the rival contention. Section 35(1) of the Central Excise Act deals with the period of limitation for filing an appeal before the Commissioner (Appeals) and also for condonation of delay in filing of appeal. Aforesaid provision is reproduced thus:-

> *"35(1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals) hereafter in this Chapter referred to as the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order:*
>
> *Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days."*

6. On bare reading of aforesaid provision it is evident that ordinarily the period of limitation for filing an appeal against the adjudicating order is sixty days from the date of communication of order/decision to the party concerned. However, the proviso to Section 35(1) authorizes Commissioner (Appeals) to extend the period of limitation for a further period of thirty days if he satisfies that the appellant was prevented from presenting the appeal within sixty days by a sufficient cause.

7. In the instant case plea of the appellant is that appeal could not be filed within sixty days from the date of service of the order-in-original on the appellant as his Counsel was suffering from viral fever. The sickness of a lawyer or the party concern in our view is a sufficient ground for condoning the delay in filing of appeal. Just because the appellant did not produce the medical certificate of illness of his Counsel, in our view Commissioner (Appeals) was not justified in declining the request to condone the delay in filing of appeal. The Commissioner (Appeals) was expected to take liberal view of the matter instead of shutting the door of justice on the appellant by taking hyper technical view of the matter. Thus, under the circumstances, we find it difficult to sustain the order of Commissioner (Appeals) refusing to condone the delay of seven days in filing of appeal. Accordingly, the impugned order is set aside and the matter is remanded back to the Commissioner (Appeals) with the direction to decide the appeal on merits after giving opportunity of being heard to the appellant.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant