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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/544/2012
COD Application No. : E/COD/113/2012
Appeal No. : E/495/2012-EX[DB]

Dated: **16/08/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
SHIV SHAKTI STEELS PVT. LTD.
VILLAGE-CHAKRADHARPUR,
HAMIRPUR ROAD, DISTT. RAIGARH,
CHHATTISGARH.

SHIV SHAKTI STEELS PVT. LTD. (Appellant)

VS

C.C.E. RAIPUR (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/942/2012-EX[DB]**, Stay Order No. **SO/1270/2012** and **MO/886/2012** dated **06/08/2012** 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. RAIPUR
Central Excise Building, Dhamtari Road,
Tikrapara, Raipur 492001.

2. Advocate(s) / Consultant(s):
RANDHIR SINGH,ADVOCATE
37, LOWER GROUND FLOOR,
WORLD TRADE CENTRE,
BARAKHAMBA AVENUE, N DELHI.

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-I

Date of hearing/decision: 6.8.2012

Arising out of Order in appeal No.26(ST)/RPR-I/2009 dated 30.12.2009 passed by the Commissioner , Central Excise (Appeals), Raipur I.

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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?	

Shiv Shakti Steels Pvt. Ltd. ... Appellant

Vs.

C.C.E., Raipur (C.G.) .. Respondent

Condonation Application No.113 of 2012
Stay Application No.544 of 2012 and
Central Excise Appeal No.495 of 2012

Present for the appellant : Shri Randhir Singh, Advocate

Present for the respondent : Shri Sanjay Jain, A.R.

MISC order No. 886/2012-EX(BR)
STAY order No. 1270/2012-EX (BR)
FINAL Order No. A/942/2012-EX (BR)

Per Mr. Justice Ajit Bharihoke(Oral):

The appellant on 1.2.2012 filed appeal against the impugned order in appeal No. 26(ST)/RPR-I/2009 dated 30.12.2009 whereby the Commissioner (Appeals) dismissed the appeal preferred by the appellant against the order in original confirming duty demand of

Rs.36,42,083/- along with equal amount of penalty. The appeal was dismissed by the Commissioner (Appeals) due to non-compliance of direction to pre-deposit of Rs.16,00,000/- towards part payment of duty demand, interest and penalty.

2. Along with appeal the appellant has moved the instant application for condonation of delay in filing of appeal. The explanation given for delay in filing of appeal is that Shri Sunil Kumar Agrawal, Chartered Accountant who was representing the appellant before the Commissioner (Appeals) due to personal difficulty could not communicate the impugned order to the appellant. It is alleged that the appellant however was not served with copy of the impugned order and he came to know about the impugned order from the Range Superintendent, Raigarh. Thereafter, the appellant obtained the certified copy of the impugned order from the Range office on 18.1.2012 and preferred the appeal against the impugned order.

3. Learned Counsel for the appellant has pressed for condonation of delay in filing of appeal on the plea that the delay caused in filing of appeal is unintentional and it has occurred because of failure on the part of authorized representative of the appellant to communicate the impugned order to the appellant. It is also contended that the copy of impugned order was never served on the appellant. Learned Counsel has also pleaded that it is well settled that the Courts and Tribunal while dealing with the application for condonation of application should adopt liberal approach. That unless there is gross negligence or mala fide on the part of the litigant, doors of justice should not be shut on the party concerned on technical plea of limitation. In support of his contention, the appellant has relied upon the following judgments:

(a) Star Battery Ltd. vs. Asstt. Commr., C.Ex., Dankuni – 2011 (264) ELT 363 (Cal.)

(b) Reckitt Benckiser (I) Ltd. vs. C.C.E. – 2010 (249) ELT 512 (Cal.)

(c) Uniworth Textiles Ltd. vs. C.C.E., Nagpur – 2011 (270) ELT 661 (Bom.)

(d) N. Balakrishna vs. M. Krishnamurthy – 2008 (228) ELT 162 (SC)

(e) Indian Oil Corporation Ltd. vs. Subrata Borah Chowlek – 2010 (262) ELT 3 (SC).

4. Shri Sanjay Jain, ld. A.R. for Revenue on the contrary has opposed the application. He has pleaded that in the instant case there is no justification for condonation of delay for the reason that the appellant was not grossly negligent in following his remedy of appeal but his conduct is also mala fide.

5. We have considered the rival contentions and perused the record. Section 35B of the Central Excise Act, 1944 deals with the appeals to the Appellate Tribunal. Clause (3) of Section 35B provides that every appeal to the Tribunal shall be filed within three months from the date on which order sought to be appealed against is communicated to the party's concern. Clause (5) of Section 35B confers power upon the Appellate Tribunal to admit appeal after expiry of relevant period if it is satisfied that there was sufficient cause for not presenting the appeal within that period.

6. From the above it is evident that the Appellate Tribunal has ample power to condone the delay in filing of appeal provided sufficient cause for delay is shown by the appellant.

7. Before adverting to the explanation given by the appellant for delay in filing of appeal it would be pertinent to note that in the instant case, the jurisdictional adjudicating authority vide order in original dated 28.8.2008 confirmed the duty demand of Rs.36,42,083/- against the appellant along with interest and imposed

equal amount of penalty. The appellant preferred appeal against the order in original. Commissioner (Appeals) vide interim stay order dated 18.2.2009 directed the appellant to pre-deposit a sum of Rs.16 lakhs in terms of Section 35F of the Central Excise Act, 1944 towards part payment of duty/interest/penalty imposed vide order in original. The appellant was directed to make pre-deposit on or before 25.3.2009. The appellant however failed to deposit the sum of Rs.16 lakhs as directed and this resulted in dismissal of his appeal due to non-compliance of provision of Section 35F of the Central Excise Act. Appellant in his application for condonation of delay has not come out with explanation as to why he has not complied with the order of pre-deposit passed by the Commissioner (Appeals) under Section 35F of the Central Excise Act. This circumstance shows mala fide intention on the part of the appellant to avoid payment of excise duty.

8. Now the question arises whether in the instant case the appellant was prevented from filing of appeal because of a reasonable cause. On perusal of the application for condonation of delay, it is clear that the appellant was represented before Commissioner (Appeals) by Shri Sunil Kumar Agrawal, Chartered Accountant. It is claimed by the appellant that Shri Sunil Kumar Agrawal due to personal difficulty could not communicate the order of dismissal of appeal to the appellant. We are not satisfied with the aforesaid explanation. From the record it is evident that the appeal has been filed after a delay of almost 2 years. It is highly improbable that during this period of 2 years the appellant was not in contact with his authorized representative Shri Sunil Kumar Agrawal. The appellant has placed on record a copy of order in appeal No.111/RPR-I/2010 dated 25.3.2010 in his own case. In the aforesaid order, the Commissioner (Appeals) has recorded that Shri Sunil Agrawal, Consultant of the appellant appeared for personal hearing on 25.2.2010. From this it is evident

that even after passing of the impugned order in December 2009 Shri Sunil Agrawal, C.A. continued to represent the appellant in excise matter. Therefore, it is highly improbable that Sunil Agrawal would not have communicated the dismissal of appeal to the appellant. Further the though the explanation given for delay is that due to personal difficulty Shri Sunil Kumar, Chartered Authorised Representative could not communicate the impugned order to the appellant, affidavit of Shri Sunil Kumar Agrawal has not been filed to support this averment. Thus, in our view, the explanation given in the application for condonation of delay is nothing but an after-thought. The appellant has been grossly negligent in this matter. As such we do not find any reason to condone the delay in filing of appeal.

9. As regards the above referred judgments relied upon by the appellant we are of the view that those judgments are of no avail to the appellant for the reason that those are based upon their own peculiar facts which are distinct from the facts of this case discussed above.

10. In view of the above discussion, we are of the opinion that the appellant has not been able to show sufficient cause for condonation of delay in filing of appeal. Accordingly, the application for condonation of delay is dismissed.

11. Since the appeal has been filed almost 2 years after expiry of period of limitation for filing of appeal, this appeal is also dismissed as time barred.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/