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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/1834/2012
Appeal No. : E/1438/2012-EX[DB]

Dated: **21/08/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
Dalla Cement Factory
Mr V K Pandey, Dalla, Sonebhadra(up)

Dalla Cement Factory (Appellant)

VS

C.C. & C.E. & S.T.-Allahabad (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/953/2012-EX[DB]**, Stay Order No. **SO/1340/2012** dated **09/08/2012** 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. & C.E. & S.T.-Allahabad
38...M G MARG...CIVIL LINES,
ALLAHABAD,211001

2. Advocate(s) / Consultant(s):
V.Lakshmi Kumaran
5,Jangpura Extension,Link Road,New
Delhi-110014

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: 09.08.2012

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. 1438 of 2012 and
Excise Stay No. 1834 of 2012

(Arising our of order-in-appeal No. 22/CE/ALLD/2012 dated 28.02.2012 passed by the Commissioner, Central Excise, Allahabad).

M/s Dalla Cement Factory — Appellants

Vs.

CCE, Allahabad — Respondent

Present Sh. A.R. Madhav Rao, 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. 1340/2012-EX(BR)
FINAL ORDER NO. A/953/2012-EX(BR)

Per: Rakesh Kumar (Oral)

In this case the Commissioner (Appeals) by the impugned order has dismissed the appeal filed by the appellant on the ground of time bar for 15 day's delay in filing of the appeal inasmuch as while the order-in-original 19.08.2011 was dispatched to the appellant on 26.08.2011and the same had been received on 31.08.2011, the appeal was filed on 14.11.2011 and thus, there was about 15 day's delay in filing of the appeal.

2. Heard both the sides.

3. Matter is listed for argument on stay application. Ld. Counsel submits that the entire amount of duty alongwith interest is deposited. The appellant only prays for waiver of condition of pre-deposit of duty. This fact is not disputed by the AR.

4. Since a short issue is involved regarding condonation of delay in filing the appeal, though the matter is listed for stay only, after hearing the ld. Advocate for the appellant it is decided to dispose of the appeal itself for final disposal with the consent of both the sides.

5. Shri A.R. Madhav Rao, Advocate the ld. Counsel for the appellant pleaded that this is a case of failure of natural justice for the reason that pursuant to the letter dated 27.01.2012 issued by the Commissioner (Appeals) to the appellant informing the date of hearing as 24.02.2012 at 12 p.m. the appellant wrote a letter dated 23.02.2012 to the Commissioner (Appeal) requesting him to grant adjournment on the ground that their

Solicitor was not in position to attend the personal hearing on the scheduled date due to pre-occupation. Despite of the fact that aforesaid letter was received on 24.02.2012 in the office of Commissioner (Appeals), the Commissioner (Appeals) instead of granting adjournment, proceeded to decide the appeal ex-parte. It is submitted that this has resulted in great prejudice to the appellant. He further pleaded that otherwise also there was only a delay of 15 days in filing of appeal which was within the powers of the Commissioner to condone. It is submitted that the law relating to condonation of delay is well settled and it has been time and again held by various Courts including the Apex Court that the doors of justice should not be shut on the litigant on technical plea of limitation, unless there is a strong evidence of gross negligence and malafide on the part of the person concerned. Thus, he has urged us to condone the delay in filing of the appeal and set aside the impugned order with direction to the Commissioner (Appeals) to decide the appeal on merits after giving due hearing to the parties.

6. Ld. AR on the contrary has pressed for dismissal of appeal on the ground that the Commissioner (Appeals) was justified in dismissing the appeal on the issue of limitation because there was no application requesting for condonation of delay.

7. We have considered the rival contentions and perused the records. From the facts narrated by ld. Counsel for the appellant it is clear that the Commissioner (Appeals) despite of the request for adjournment on account of non availability of the Counsel, instead of adjourning the matter went on to decide the appeal which procedure adopted by him, in our considered view, is too harsh and he ought to have granted adjournment for hearing on the point of limitation.

8. Thus, in our considered view, this is a case of failure of natural justice. Accordingly, we accept the appeal and set aside the impugned order. The matter is remanded back to the Commissioner (Appeals) who shall consider the explanation, if any, given by the appellant for condonation of delay and decide the matter in accordance with law. Appeal as well as stay application is disposed of.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant