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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/1306/2011 - CU[DB] Date **05/06/2012**

ST/S/2756/11

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

To :
M/S BIHARI & COMPANY,

5, RESIDENCY ROAD, UDAIPUR (RAJ.)

M/S BIHARI & COMPANY, Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/417/ 2012 CU[DB]** dated 28.05.12 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Alongwtih Stay Order No ST/S/631/12

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW 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 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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066

COURT NO. II

ST/Stay No. 2756/2011 in &
Service Tax Appeal No. 1306/2011

[Arising out of Order-in-Appeal No.178(CB)ST/JPR-II/2011 dated 24.3.2011 passed by the Commissioner (Appeals-II), Jaipur]

Date of Hearing/decision: 28th May, 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?	

M/s. Bihari & Company — Appellant

Vs.

CCE & C, Jaipur-II — Respondent

Present for the Appellant : Ms. Sukriti Das, Advocate
Present for the Respondent : Shri B.L. Soni, D.R.

Coram: Hon'ble Shri D.N. Panda, Judicial Member;
Hon'ble Shri Mathew John, Technical Member

FINAL ORDER NO. ST/A/417/12-Cus
Stay order No. ST/S/631/12-Cus

Per D.N. Panda:

There is no dispute that adjudication order was passed on 28.9.2007, and according to the order recorded by learned Commissioner (Appeals), said order was despatched by registered post on 3.10.2007 which was intended to be delivered on the address given by the appellant. Taking the date of despatch of the order into consideration, learned Commissioner (Appeals) noticed that when the appeal came before him after 3 years, one month and 12 days, that appeal was considered to be time barred by him. Learned Counsel submits today that adjudication order was received by the appellant on 25.11.2010 and thereafter appeal was filed before the Commissioner (Appeals) on 14.2.2011. We do not find any evidence to show that the order despatched by registered post on 3.10.2007 was returned back to the authority. In absence of such evidence, it is clear that the order was served on the appellant at the address given by him. There is no doubt that appropriate delivery of adjudication order was made. The copy said to be received on 25.11.10 is the copy which the appellant received when they requested for such copy at a later point of time. Receipt of such copy on request does not imply that the original copy sent by registered post was not received by appellant.

2. We have been hearing grievance like above frequently in the Tribunal. In existence of evidence of service on a date before limitation, there is nothing to doubt on the manner service of order by public officers. Presumption of service shall be in favour of the public officer acting in good faith

unless that is controverted leading cogent evidence by assessee proving no service.

3. We had an occasion to consider the case like above in the case of Bhilwara Zila Ex-ser. Welfare Sahakari Samiti vs. Dy. Commissioner, Central Excise, Div., Bhilwara where we have found that plea of wrong service on a different person was defence of the assessee but the assessee failed to prove that. We had dismissed that appeal. Such order has been upheld by the Hon'ble High Court of Rajasthan in the case of Bhilwara Zila Ex-ser. Welfare Sahakari Samiti vs. Dy. Commissioner, Central Excise, Div., Bhilwara, reported in 2011 (24) STR 651 (Raj.). We are also guided by judgement of Hon'ble High Court of Punjab & Haryana in the case of CCE, Ludhiana vs. Mohan Bottling Co. (P) Ltd., reported in 2010 (255) ELT 321 (P & H) where following principles of law was appreciated in Para 6 of judgement which reads as under:

> "**6.** from the perusal of sub-section (2) of Section 37C of the 1944 Act. we have no hesitation to hold that the envelop containing the order was dispatched under Registered A.D. Post on the correct address. Therefore, it shall be deemed to have been served on the date on which the letter is tendered or delivered by post or a copy thereof is affixed in the manner provided under sub-section (1) by affixing the same to some conspicuous part of the factory or warehouse or other place of business. In the present case, the assessee has not alleged even a single word that the envelop

containing the order was not having the correct address."

So also, the ratio laid down in Para 9 of judgement of Hon'ble High Court of Punjab & Haryana being most relevant is reproduced below for convenient reading:-

> "**9.** We have carefully perused the judgments of the Apex Court in the matters of *M.A. Mohammed Ismail's* (supra) and in *Raja Kumari* (supra). We have also carefully examined Section 37C of the 1944 Act, Section 27 of the General Clauses Act and Section 144 of the Indian Evidence Act. Having examined, we are of the view that it can safely be said that sending the order at correct address by registered post is a sufficient compliance of Section 37C of the 1944 Act. It is for the assessee to rebut the presumption of service by cogent evidence that in fact order was never served upon him. In the present matter, assessee failed to discharge his burden and sending the order by registered post at the correct address is sufficient compliance."

4. In view of the aforesaid observation, it is not desirable to keep the appeal pending for which that is dismissed. Accordingly, stay application is also dismissed.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

RK