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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/416/2012-CU[DB],ST/S/930/12, ST/COD/162/12

Dated: **13/06/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
BHARAT CYLINDER TESTING & PAINTING CENTRE
Ward No 13, Shahpura Bhitoni, Distt-Jabalpur(MP)

BHARAT CYLINDER TESTING & PAINTING CENTRE (Appellant)

VS

C.C.E Bhopal (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/460/2012-CU[DB]** dated **06/06/2012** and Stay/MISC Order No. **ST/M/218/2012 and ST/S/667/2012** passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

Assistant Registrar
CUSTOMS Appeal Branch

Copy To,
1. **Respondent**
C.C.E Bhopal
Hoshangabad Road, 48, Administrative Area, Area Hills, Bhopal (M.P.) 462011

2. **Advocate(s) / Consultant(s):**
KAMAL KHEMUKA,TAX ADVOCATE
9, MLC SUPER MARKET,
JABALPUR(MP)482002

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
CUSTOMS Appeal Branch

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI

PRINCIPAL BENCH, COURT NO. III

COD Application No.162 of 2012
Stay Application No.930 of 2012
Service Tax Appeal No.416 of 2012

[Arising out of Order-In-Revision No.09/Commr/ Revision/Adj/JBP/10, dated 10.11.10 issued by CCE, Bhopal]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

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 should 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 Departmental authorities?	Yes

Bharat Cylinder Testing & Painting Centre — Appellant
Vs.
CCE, Bhopal — Respondent

Coram :
Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

Appearance:
Shri Kamal Khemka, Adv. for the Appellant
Shri B.L.Soni, AR for the Respondents

Date of Hearing/Decision : 06.06.2012

Misc **ORDER NO** ST/M/218/12 - Cus.
Stay order No. ST/S/667/12-Cus.
Per Ms. Archana Wadhwa:
Final order No. ST/A/460/12-Cus.

The prayer in the application is to condone the delay of 381 days in filing the present appeal.

2. After hearing both the sides, we find that the Order-In-Appeal was passed by Commissioner(Appeals) on 10.11.10 and as such the normal period of limitation of 3 months, for the purpose

of filing of appeal, expired on or around 09.02.11. However, the appeal stands filed on 27.03.12, i.e., after a period of more than one year.

3. Ld. Advocate appearing for the appellant fairly concedes that the said order of Commissioner(Appeals) was received by them on 08.12.10. However, he submits that they decided to file an appeal against the said order subsequently as they came to know about the decision of the Tribunal in the case of Harshita Handling reported as 2010(04)LCS-0169, vide which ~~a~~ relief was granted to another assessee similar situate. He agrees that it is only thereafter that they decided to file an appeal.

4. Opposing the prayer of the ld. Advocate, Shri Soni, ld. AR submits that the impugned order having been received well within time by the assessee, they were supposed to file an appeal within the normal period of limitation. The reasons for delay as explained by the appellant do not constitute sufficient grounds for COD. As such he prays for rejecting the application.

5. We have considered the submissions made by both the sides. We find that the Tribunal's decision in the case of Harshita Handling was passed on 26.04.10 and was reported in the journals in the year 2010 itself, i.e., much prior to the passing of the impugned order itself. Merely because the appellants were not aware of the same, cannot be made the ground for condoning the delay. Even if the said decision was not in the knowledge of the appellant, they were well within their rights to challenge the impugned order of the lower authority if they were of the view that the same is perverse order. As such we find no justifiable grounds

delay in

for allowing the filing of the appeal. The COD application is accordingly rejected. As a consequence, stay petition as also appeal gets rejected as barred by limitation.

(Pronounced in the open Court on)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

RK-I