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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**

**STAY Application No. :** ST/Stay/2844/2012
**COD Application No. :** ST/COD/2845/2012
**Appeal No. :** ST/2181/2012-CU[DB]

Dated: **04/09/2012**

**Assistant Registrar**
C.E.S.T.A.T. New Delhi
To,
**Ishwar Metal Industries**
F-79, (b), Road, No.6, Vki Area, Jaipur
(raj)

**Ishwar Metal Industries** (Appellant)

**VS**

**C.C.E. & S.T.-Jaipur-i** (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/559/2012-CU[DB]**, Stay/MISC Order No. **ST/SO/904/2012** and **ST/MO/308/2012** dated **24/08/2012** 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. <u>Respondent</u>**
**C.C.E. & S.T.-Jaipur-i**
NCR BUILDING, STATUE CIRCLE, C-SCHEME, JAIPUR,302005

**2. Advocate(s) / Consultant(s):**
Mr. Bipin Garg, Adv
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 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. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

13. Office Copy

14. Gaurd File

**Assistant Registrar**
**CUSTOMS Appeal Branch**

# IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
## COURT NO. III

**COD Application No.2845 of 2012**
**Stay Application No.2844 of 2012**
**Service Tax Appeal No.2181 of 2012**

[Arising out of Order-In-Appeal No.43/AKJ/ST/JPR-I/2012, dated 13.03.12 issued by CCE, Jaipur]

**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 |

Ishwar Metal Industries — Appellants
Vs.
CCE, Jaipur — Respondent

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

**Appearance:**
Shri Bipin Garg, Adv. for the Appellants
Shri V.P.Batra, DR for the Respondent

Date of Hearing/decision : 24.08.2012

Misc order No. ST/M/302/12-Cus
Final **ORDER NO. ST/A/559/12-Cus**
Stay order No. ST/S/904/12-Cus

**Per Ms. Archana Wadhwa:**

The delay in filing the present appeal is of 14 days which stands attributable to the fact that the appellant being away from his place of office. Keeping in view the fact that the delay is only about 14 days, we condone the day.

2. Further we note that the Commissioner(Appeals) has rejected the appeal on the point of time bar in as much as the appeal

before him was filed with the delay of 69 days. The appellant filed COD application before Commissioner(Appeals) on the ground that their excise person left the job on 24.02.07 and such the appeal could not be prepared well within the time and could not be filed before the last date of expiry, i.e., 21.04.11. The Commissioner (Appeals) has not accepted the above reason for late filing of appeal and rejected the appeal.

3. The appellant's contention is that one of their employee Shri Ramchander Choudhary who was looking after excise work, left the job on 24.03.11 and joined another factory on 04.04.11. All the relevant papers were lying with him and as such the last date of expiry of time could not be taken care of.

4. At this stage, we may take note of the decision of Hon'ble Supreme Court in the case of Perumon Bhagvathy Devaswom wherein after discussing no. of judgements as well as that of the High Courts, enunciated the principles which need to be kept in mind while dealing with applications filed under the provisions of Order 22, CPC along with an application under Section 5, Limitation Act for condonation of delay in filing the application for bringing the legal representatives on record. In paragraph 13 of the judgement, the Hon'ble Court has as under :-

> *"13. (i) The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' in section 5 of the Limitation Act should*

*receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.*

*(ii). In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representative of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decided the matter on merits. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.*

*(iii). The decisive factor in condonation of delay, is not the length of delay but sufficient of a satisfactory explanation."*

5. By adopting the above guidelines laid down by Hon'ble Supreme Court, we deem it fit that the appellant has to be shown some leniency in the present case for the purpose of condoning the delay before Commissioner(Appeals). The circumstances explained by the appellant cannot be held leading to any conscious delay or dilatory tactics on their behalf. As such we are of the view that Commissioner(Appeals) should have condoned the delay and should have decided the appeal on merits.

6. In view of the above, we set aside the order of Commissioner (Appeals) and direct him to decide the appeal on merits after condoning the delay in filing the appeal.

7. COD as also stay petition and appeal gets disposed of in above manner.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

RK-I