15.

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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. C/COD/100-101/2011, C/STAY/805-806/2011 IN C/108-109 /2011 - CU[DB] Date **30/04/2012**

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

To :
SHRI PUNEET KUMAR GOEL PARTNER,

M/S SHEEL CHAND INDUSTRIES 6/906, ANAND
BAGH HALDWANI (UTTRAKHAND)

SHRI PUNEET KUMAR GOEL PARTNER, Appellant

MISC. ORDER NO.C/M/69-70/2012 Vs

C.C. (ICD) NEW DELHI **STAY ORDER NO.C/S/124-125/2012** Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/A/120-121/ 2012 CU[DB]** dated 19.04.2012 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C. (ICD) NEW DELHI
ICD, TUGHLAKABAD,
NEW DELHI 110020.

2. Adv. / Consult LASA CONSULTANCY,
C-15,16, HARTHAL INDUSTRIAL AREA,
KANTH ROAD, MORADABAD, U.P. 244 001.

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
14. SHRI MOHAN KUMAR GOEL PARTNER,
AGM-60, GALLA MADNI, RUDRAPUR,
U.S. NAGAR (UTTRAKHAND)

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

C/COD 100-101/11, C/Stay Nos.805-06/2011
in C/Appeal Nos.108-09/2011

(Arising out of order in original No.29/08 dated 31.3.08 passed by the Commissioner of Central Excise, New Delhi)

Date of Hearing: 19.4.2012

For Approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member Judicial
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 would 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 Department Authorities?	Yes

1. Shri Mohan Kumar Goel — Appellants
2. Shri Puneet Kumar Goel

Vs

CCE, New Delhi — Respondent

Appeared for the Appellant: Shri R.L. Thapali , Advocate
Appeared for the Respondent: Shri K.P. Singh, DR

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

Misc order No. C/M/ 69-70/12-Cus.
Final ORDER No. C/ A/ 120-121/12-cus
Stay order No. C/S/ 124-125/12-Cus.

Per Archana Wadhwa:

The prayer in the application is to condone the delay of 985 days in filing the present appeals.

2. Elaborating on his arguments Shri R.L. Thapali, learned Advocate appearing for the appellants submits that the impugned order was passed by the Commissioner of Customs ICD Delhi on 31.3.08 confirming demand of duty against M/s Sheel Chand Industries which is a partnership firm of the present applicants. Vide said order, he also imposed penalty of Rs. 10 lakhs each on the present applicants. He submits that a Joint appeal was filed by M/s Sheel Chand Industries as also the present application on 15.6.08 i.e. within the normal period of limitation of 3 months. In support of his contention that the appeal filed on 15th July, 08 was by and on behalf of all the 3 applicants (the main importer as also by the partner), he draws our attention to the preamble of the appeal which is to the effect as M/s Sheel Chand Industries and Another. He also draws our attention to SL No. 8-A of CA form wherein the total amount of penalty imposed upon the partnership firm as also on the partners stands specified. He also draws our attention to various grounds of appeal using the expression "appellants', indicating thereby that the appeal was filed on behalf of all the three appellants.

2. Learned Advocate further claries that the Joint appeal was filed by the Advocate handling the matter at the relevant time. However, when the appellant approached the present Advocate, he was advised by the Counsel to file two separate appeals as per the procedure of the

CESTAT. And that is how the present separate appeals filed by the partners with COD application.

3. Countering the arguments, learned DR Shri K.P. Singh submits that there is nothing on record to show that the said mistake happened on account of the advice given by the earlier Advocate. He submits that some kind of confirmation is to be sought from the earlier Advocate.

4. After appreciating the contentions raised by the Consultant appearing for the appellant, we find that the main appeal was filed by the partnership firm well within the limitation period. It is also seen that a total penalty imposed on all the three applicants was mentioned in the said appeal and the preamble of the appeal also shows that the same has been filed on behalf of M/s Sheel Chad Industries and others. As such, we are of the view that the first appeal filed well within the period of limitation was on account of all the three applicants.

5. In as much as the main appeal was filed well within the limitation period of 3 months, the present two appeals filed by the partners are required to be treated as supplementary appeals and the delay in filing the same is required to be condoned. We order accordingly and allow the COD applications.

6. At this stage, learned Advocate submits that the earlier appeal filed by them on behalf of M/s Sheel Chand Industries has been decided by the Tribunal vide its Final order No. C /334-35/11 dated 6.7.11. The impugned order stands set aside and appeal allowed on merits. On being questioned as to why there was need to file the

present separate appeals on behalf of the partners, he submits that the present applets were filed on 15.3.11 whereas the said order of the Tribunal stands passed on 6.7.11. He submits that in as much as the impugned order has already been set aside, the present two appeals challenging imposition of penalties on partners also be allowed.

7. Shri K.P. Singh appearing for the Revenue leaves the matter to the discretion of the Bench.

8. In as much as the order impugned in the present appeal was also impugned in the main appeal of M/s Sheel Chand industries and stand set aside, we by following the earlier order, set aside the impugned order in respect of the present appellants also and allow their appeals. Stay petition also gets disposed of.

9. COD application, stay applications and appeals get disposed of in the above manner.

(Order dictated and pronounced in the open Court.)

(ARCHANA WADHWA)
Judicial Member

(MATHEW JOHN)
Technical Member

MPS*