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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/742 /2007 - CU[DB]   Date **19/03/2012**

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

To :
C.ARUNKUMAR
33, 28TH CROSS STREET, CHENNAI - 600090

C.ARUNKUMAR Appellant

Vs

C.C. NEW DELHI (IMPORT & GENERAL) Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/A/71 2012 CU[DB]** dated 09.02.12 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. NEW DELHI (IMPORT & GENERAL)
NEW CUSTOM HOUSE, NEAR
I.G.I. AIRPORT, NEW DELHI
110037.

2. Adv. / Consult MR. B.L.NARSIMHAN, ADV
B-6/10, SAFDARJUNG ENCLAVE
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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

Date of Hearing:09.02.2012
Date of decision:09.02.2012

Customs Appeal No.742 of 2007

[Arising out of Order-in-Appeal No.96/EXP/D-I/2007 dated 8.6.2007 passed by the Commissioner of Customs (Appeals), New Delhi].

C.Arunkumar Appellant

Vs.

CC, New Delhi Respondent

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member
Hon'bleShri Rakesh Kumar, Technical Member

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1. Whether Press Reporters may be allowed to see 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?

Appearance: Rep. by Shri B.L. Narsimhan, Advocate for the appellant.
Rep. by Shri K.P. Singh, SDR for the respondent.

CORAM: Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Rakesh Kumar, Technical Member

Final Order No. C/A/71/12-Cus /Dated: 09.02.12.

Per. D.N. Panda:

Grievance of the appellant in this case is that learned First Appellate Authority did not accept the date of application of refund claim as 28.07.2003 on the ground that there was no acknowledgement of the said documents. The appellant submits that as early as 2003, refund application was filed and was acknowledged by the Inspector of Control Room which is apparent from page 52 of the appeal papers. It is also stated that officer who acknowledged the receipt of the cover had signed putting date as 28.7.2003 therein. But again that was striken by him. The refund application was sent by courier.

2. It was also submitted on behalf of Appellant that it is a factual recording by the Appellate Authority that when the Revenue Authority did not trace the refund application, they asked the applicant to file another application and that was done on 22.07.2005. Therefore, it is clear that refund application was filed on 28.07.2003. It is also averred on behalf of the Appellate that appellant should not have been denied refund on the sole

ground that acknowledgement was issued by the Inspector of Control Room.

3. To the aforesaid submission, supporting the First Appellate Order, Representative for Revenue submits that page 52 which is claimed to have been acknowledgement in respect of the refund application issued by the Inspector of Control Room can not be taken as acknowledgement in respect of the refund application because it does not make any reference to that. Therefore, what the Authorities below have observed and held remain untouched.

4. Heard both sides and perused the records.

5. We do appreciate that consequent upon change of the classification of the goods refund accrued. But we are helplessness to agree that the refund application was made on 28.07.2003 for the reasons that a courier does not submit open papers for acknowledgement. Normally, the documents are covered under envelope and such envelope is presented for acknowledgement. From page 49, it shows that striking of the signature put by recipient was not presented in a cover. It is unbelievable that a courier had presented paper without cover. Also evidence of delivery through courier is not borne by record. Averments of appellant is not supported by evidence for which the appellant shall not plead gain merely making an averment in

vaccume. Factual finding of the Authority as is apparent from para 2 of the order is not acceptable to be a finding because there is no cogent or believable evidence suggesting that the refund application was filed on 28.07.2003. Further, perusal of page 51, which was also relied upon by the appellant shows that acknowledgement format is prescribed by refund application. Once an acknowledgement is not issued in the proper form as required by the law, no acknowledgement obtained in a form not known to law cannot be accepted by law as an acknowledgement claimed to have been issued on 28.07.2003.

6. In view of above reasoning [illegible] refund claim of the appellant is not entertainable being time barred. Accordingly, the appeal is dismissed.

[Dictated and pronounced in the open court]

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

Ckp.