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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
EXCISE APPEAL BRANCH

COD Application No. : E/COD/474/2011, E/COD/475/2011
Appeal No. : E/2990/2011-EX[DB], E/2991/2011-EX[DB]

Dated: **06/07/2012**

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

C.C.E. KANPUR
117/7, Sarvodaya Nagar, Kanpur 208005.

C.C.E. KANPUR (Appellant)

VS

SHRI SAURABH GUPTA,
DIRECTOR (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/777-778/2012-EX[DB]** & MISC ORDER NO. 782-783/2012-EXdated **02/07/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent

M/S LAXMI OIL & VANASPATI (P)
LTD. 97, KHANCHANDPUR, RANIA,
KANPUR (DEHAT)

2. Advocate(s) / Consultant(s):

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
EXCISE Appeal Branch

P.T.O.-2,

14. **SHRI SAURABH GUPTA,**
DIRECTOR
M/S LAXMI OIL & VANASPATI (P)
LTD. 97, KHANCHANDPUR, RANIA,
KANPUR (DEHAT)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 2.7.2012

Condonation Application No.474-475 of 2011

Arising out of the order in appeal No.188-189/CE/APPL/KNP/2010 dated 29.3.2010 passed by the Commissioner (Appeals) , Customs & Central Excise , Kanpur.

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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?	

C.C.E., Kanpur ... Appellant

Vs.

Laxmi Oils & Vanaspati P. Ltd.
Shri Saurabh Gupta, Director .. Respondents

Present for the appellant :Shri N. Pathak, A.R.
Present for the respondent :None
MISC order No. 782-783/2012-Ex(BR)
FINAL Order No. ~~A/777-778/2012-Ex~~ (BR)

Per Mr. Justice Ajit Bharihoke (Oral):

Vide this order we propose to dispose of two applications for condonation of delay of one year seven months in filing of appeals by the Department against the order of Commissioner (Appeals) dated 29.3.2010 whereby he accepted the appeals respectively filed by M/s Laxmi Oils & Vanapati P. Ltd. and Shri Saurabh Gupta, Director of the said company.

2. The cause shown for delay in filing of above appeals by the Department is that the impugned order was passed by the

Commissioner (Appeals) following the ratio of the judgment of the Tribunal in the matter of *CCE, Hyderabad vs. Priyanka Refineries Ltd.* reported in *2010 (249) E.L.T. 70 (Tri. - Bang.)*, it is alleged in the applications that the department had preferred civil appeals No. 218-220 of 2010 against the judgment of the Tribunal in *CCE, Hyderabad vs. Priyanka Refineries Ltd.* (supra), the SLP, however, was dismissed by the Hon'ble Supreme Court on 7th of January 2010. When the matter was considered by the Committee of Commissioners, the Committee decided not to file appeal against the impugned order for the reason that the order in *CCE, Hyderabad vs. Priyanka Refineries Ltd.* (supra) was confirmed by the Hon'ble Supreme Court. It is further alleged that subsequently in the matter of *CCE, Jallandhar vs. A.G. Flats Ltd.*, the Tribunal vide final order No. 648-661 of 2011-EX dated 25/7/11 and also reported in *2012 (277) E.L.T. 96 (Tri. - Del.)* took the view that dismissal of civil appeals In-Limine by the Hon'ble Supreme Court without adverting to the facts and without giving reasons could not be taken as the law laid down by Hon'ble Supreme Court. As such, in view of the clarification of legal position by the Tribunal in the matter of *CCE, Jallandhar vs. A.G. Flats Ltd.* (supra), the Department has decided to prefer appeal against the impugned order. It is submitted that the delay in filing of appeal has resulted because of mistaken interpretation of the dismissal of Civil appeal against the order in *CCE, Hyderabad vs. Priyanka Refineries Ltd.* (supra).

3. Shri Nagesh Pathak, learned Authorised Representative for the appellant submits that the Committee of Commissioner earlier decided not to prefer appeal against the impugned order under the impression that summarily dismissal of Civil Appeal against the order of the Tribunal in the case of *CCE, Hyderabad vs. Priyanka Refineries Ltd.* amounted to laying down of law.

4. Notice issued to the respondent at his correct address have been received back undelivered with the report that he is not available

on the given address. From the service report it appears that the respondent is avoiding service, thus, we have proceeded ex parte.

5. We have considered the submissions made by Shri Nagesh Pathak, learned A.R. for the appellant. Only explanation given for delay in filing of appeals is that the Commissioner (Appeals) decided not to prefer appeal under the mistaken belief that while dismissing the Civil Appeal filed by the Department in- limine in the matter of *CCE, Hyderabad vs. Priyanka Refineries Ltd.* (supra), the Supreme Court laid down the law inasmuch as approving legal position settled by the Tribunal in the aforesaid case. This explanation in our considered view is not sufficient to condone the delay for the reason that the Committee of Commissioners had accepted the impugned order after considering the factual and legal aspect. Once the Committee of Commissioners have decided not to prefer appeal against the impugned order, the order has attained finality. As such, the issue now cannot be reopened only because in a subsequent judgment, the Tribunal has taken view that in-limine dismissal of appeal by the Supreme Court does not lay down any law.

6. In view of the discussion above, we do not find merit in the applications for condonation of delay. Accordingly, the applications are dismissed.

Excise Appeal No.2990-2991 of 2011

In view of dismissal of applications for condonation of delay the appeals are dismissed as time barred.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/