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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

Appeal No. : E/1309/2012-EX[DB]
E/S/1649/2012-EX

Dated: **23/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
Maa Mangla Ispat Pvt Ltd
Vill-natwarpur,via-tigla, Distt-raigarh(cg)

Maa Mangla Ispat Pvt Ltd (Appellant)

VS

C.C.E. & S.T.-Raipur (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/832/2012-EX[DB]** , StayOrder No. **SO/1104/2012** dated **17/07/2012** 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. <u>Respondent</u>
C.C.E. & S.T.-Raipur
CENTRAL EXCISE
BUILDING...DHAMTARI
ROAD...TIKRAPARA...RAIPUR,492001

2. <u>Advocate(s) / Consultant(s):</u>
KARTIK KURMY, ADV.
wwww/17,area 7&8, civil township,
Rourkela,Orissa-769004

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

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-I

Date of hearing/decision: 17.7.2012

Stay Application No.1649 of 2012 and Central Excise Appeal No.1309 of 2012

Arising out of the order in appeal No.38/RPR-I/2012 dated 5.3.2012 passed by Commissioner , Customs & Central Excise (Appeals I), Raipur.

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?	

M/s Maa Mangla Ispat Pvt. Ltd. .. Appellant

Vs.

C.C.& C.Ex., Raipur .. Respondent

Present for the appellant : Shri Kartik Kurmy, Advocate
Present for the respondent: Shri Amresh Jain, A.R.

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

STAY order No. 1104/2012 – Ex(BR)
FINAL Order No. A/834/2012 – Ex(BR)

Per Justice Ajit Bharihoke (Oral):

This appeal is directed against the order in appeal No. 38/RPR-I/2012 dated 5.3.2012 whereby the Commissioner (Appeals) rejected the plea of the appellant for condoning delay of 29 days for filing of appeal and dismissed the appeal.

2. Along with the appeal, the appellant has moved an application under Section 35 of the Central Excise Act, 1944 seeking waiver of condition of pre-deposit of duty demand , interest and penalty.

3. Matter was listed today for argument on stay application. Since a small issue of limitation is involved we are of the view that appeal itself can be disposed of. Accordingly, with the consent of the parties, the condition of pre-deposit is waived and we have heard the arguments on appeal.

4. Undisputedly, the instant appeal has been filed after expiry of the period of limitation of 60 days from the date of receipt of the order in original. Proviso to Section 35(1) of the Central Excise Act, 1944 confers power upon Commissioner to further extend the period for filing of appeal after expiry of the original period of limitation of 60 days, provided the appellant gives a reasonable explanation for the delay caused in filing of appeal.

5. In the instant case the appellant in the application for condonation of delay explained that his Accountant who was dealing with the matter met with an accident as a result of which he was confined to bed from 6.4.2011 to 5.7.2011 and because of this reason the appeal could not be filed in time. Commissioner (Appeals) was not satisfied with the explanation. Accordingly, he refused to condone the delay with the following observation:

> "……….. Also I note that the appeal paper bears the signature of Shri Majoj Kumar Aggarwal, Authorised Representative of the Appellant and not signed and filed by Shri J. Sahoo, Accountant who met with an accident and confined to bed. In this connection, I find that, the Accountant does accounts work only and preparation of Appeal papers are normally done by the consultant of the Appellant. …."

6. Shri Kartik Kurmy, Ld. Advocate for the appellant has pleaded that the impugned order rejecting the application for condonation of delay is illegal and arbitrary. Ld. Commissioner (Appeals) has failed to appreciate that Shri J. Sahoo, Accountant of the company was responsible for taking policy decision on the issue connected with the central excise matter. He was the person responsible for dealing with the counsel for the appellant. Learned Commissioner (Appeals) has failed to appreciate that because of accident Shri Sahoo was confined to bed from 6.4.11 to 5.7.11, as such, he could not meet and brief the counsel and immediately after joining the duty, he approached the counsel and the appeal was prepared and filed before Commissioner (Appeals). It is further contended that the present appeal is within permissible limit of 30 days after expiry of 60 days.

7. Shri Amresh Jain, learned A.R. for the Department on the contrary has argued in support of the impugned order.

8. We have considered the rival contentions and perused the record. In our view the explanation given by the appellant for delay in filing of the appeal is satisfactory and Commissioner (Appeals) should have accepted the same to condone the delay, more so because of the fact the medical certificate of Shri J. Sahoo, Accountant was also produced.

9. It is well settled that while dealing with the application for condonation of delay, the Courts/Tribunal should take liberal view. ~~and~~ Ordinarily the doors of justice should not be shut to a party on technical ground of limitation. Thus taking into account the overall facts of this case we are unable to sustain the order of Commissioner (Appeals) whereby he dismissed the appeal on the ground of limitation. We accordingly, condone the delay of 29 days for filing of appeal and set aside the impugned order. The matter is remanded back to the

Commissioner (Appeals) that he would decide the appeal after giving an opportunity of being heard to the appellant.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/