IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Excise COD Application No. 51268 of 2016
Excise Appeal No. 52265 of 2016

[Arising out of Order-in-Original No. 32-14-15 dated 05.09.14 passed by the Commissioner of Central Excise , Jaipur]

M/s. Isha Enterprises **Appellant**

Vs.

Commissioner of Central Excise **Respondent**
ST, Jaipur I

Appearance:
Shri N K Sharma, Advocate for the Appellants
Shri R K Manjhi, DR for the Respondent

<u>CORAM</u>:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. Ashok K Arya, Member (Technical)

Date of Hearing/ Decision: 04.01.2017

FINAL ORDER No.50223/2017

<u>Per: Justice (Dr.) Satish Chandra:</u>

The present appeal filed by the appellant against the impugned order-in-original No. 32-14-15 dated 05.09.14. The appeal is time barred by 601 days and application is filed for condoning the delay in filing the appeal.

2. Shri N K Sharma, learned Counsel submits that order-in-original was never received by the appellants inspite of several

reminders. It is only when the appellant has moved an application under RTI dated 11.4.2016, the department has dispatched the certified copy of the order. After having the certified copy, appellant has filed the present appeal. He submits that in the similar circumstances, Hon'ble Delhi High Court in a writ petition filed in the case of ***Steel Bird Hi-Tech India Ltd. [2013 (294) ELT 584 (Tri-Del)]***, the delay was condoned. He finally made a request that the delay of 601 days in filing the appeal may kindly be condoned.

3. On the other hand, Shri R K Manjhi, learned DR has shown a copy of dispatch register pertaining to the orders wherein order-in-original (in question) was dispatched well in time to all noticees by Registered post. He submits that once the notice has been dispatched, it is presumed under the law that notice has been served unless it is returned. In the instant case, the noticees were not returned. He also submits that notices were dispatched to other co-noticees along with the main appellant but except the appellant, no one has made a complaint that order was not received. It is only the applicant who is crying by saying that notice was not received.

4. After having heard both the parties and on perusal of the records, it appears that delay of 601 days is too long. No satisfactory reason has been given for condoning the delay as per the ratio laid down in ***Leelawanti vs State of Haryana [AIR 2012 SC 515]*** .

5. Further, it may be mentioned that in the absence of proper explanation, delay could not be condoned as per the ratio laid down in the cases of ***Calcutta Municipal Corporation vs. Pawan Kumar Saraf JT 1999 (1) SC 39*** and ***Bindra Contractors vs. Union of India [2010 (321) ITR 269 (P&H)]***. Generally, delay can be condoned by the Tribunal only for a period of 30 days as per the ratio laid down in the case of ***K Muthuswamy Pillai vs. ITAT [174 ITR 636 Madras].***

6. In the light of above discussion, and by considering the totality of the peculiar facts of the case, we are of the view that in the present case, the delay cannot be condoned in the absence of satisfactory reason. Hence, COD application is rejected and appeal being time barred is also rejected.

(Ashok K Arya)	**(Justice (Dr.) Satish Chandra)**
Member (Technical)	**President**

ss