CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 31/03/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70125/2016 SM dated 29/03/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

| Application | Appeal | Name and Address of Appellant |
|---|---|---|
| | E/53423/2014 | HOTLINE ELECTRONIS LTD<br>PLOT NO 8-A, UDYOG VIHAR<br>PART I&II, GREATER NOIDA<br>UP |
| | Name and Address of Respondent | COMMISSIONER OF CENTRAL EXCISE, NOIDA<br>C-56/42, SECTOR-62<br>NOIDA(UP) |

Other Appellants and Respondents as per Annexure

**Copy To**

3Advocate(s) / Consultant(s SH RAJESH CHIBBER,ADV
FA-9, KAVI NAGAR
GHAZIABAD

4 Bar Association, CESTAT, ALLAHABAD

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

14 C D.R 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

**Single Member Bench**

**Appeal No. E/53423/2014 (SM)**

[Arising out of Order-in-Appeal No. OI/EXCUS/000/APPL/42/14 dated 25.02.2014 passed by Commissioner of Central Excise, (Appeals) NOIDA]

**For approval and signature:**

Hon'ble Shri Anil Choudhary, Judicial Member

| | | |
|---|---|---|
| 1. | Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | |
| 2. | Whether it would 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 Department Authorities? | |

Hotline Electronics Ltd. Appellant

Vs.

C.C.E. NOIDA Respondent

**Appearance:**
Present for the Appellant: Shri Rajesh Chibber, Advocate
Present for the Respondent: Shri Pawan Kumar Singh (Supdt.) AR

**Coram:** **Hon'ble Shri Anil Choudhary, Judicial Member**

**Date of Hearing/Decision: 29/03/2016**

Final **ORDER NO.** 70125/2016

**Per: Anil Choudhary**

The appellant is in appeal against Order-in-Appeal dated 25.02.2014 by which ld. Commissioner was pleased to dismiss observing that the appellant have failed to make compliance of the pre-deposit order dated 10.01.2014 and further have not filed any application for extension of time.

2. The brief facts are that vide Order-in-Original dated 26.7.2013 Cenvat credit amounting to Rs.11,01,855/- was disallowed for some alleged discrepancy in the documents along with interest and further equal amount of penalty was imposed under Rule 15 of the Cenvat Credit Rules, 2004 read with section 11 AC of the Central Excise Act, 1944. Being aggrieved the appellant had preferred appeal before ld. Commissioner (Appeals) who vide the impugned order have dismissed the appeal without taking notice of the miscellaneous application filed on 28.01.2014 by the appellant, praying for modification of the order of pre-deposit dated 10.10.14. Being aggrieved the appellant is before this Tribunal.

3. The ld. Counsel for the appellant states that the impugned order suffers from mistake of fact apparent on the face of records, as the application for modification was pending and the same was neither considered, nor taken any notice of by the ld. Commissioner (Appeals). The ld. Counsel further points out that during the pendency of appeal before this Tribunal, they have deposited 10% of the tax dues, Rs.1,10,135/- deposited on 05.02.2015, and further prays that the same may be considered sufficient pre-deposit in view of the amended provisions of section 35F w.e.f.

06.8.2014. He further prays for remand of the matter before the Commissioner (Appeals) for a decision on merits.

4. The learnedly A.R. for Revenue relies on the impugned order and he further relies on the ruling of this Tribunal in the case of Acme Global Vs. CCE, Lucknow reported in 2011 (271) E.L.T. 80 (Tri.-Del.) where in the Division Bench of this Tribunal have held that for entitlement be heard on merits in appeal, it is mandatory for every appellant to deposit the amount demanded and confirmed by the Adjudicating Authority. It was also held that that requirement of discretion by the appellate authority does not mean that personal hearing is absolutely necessary. The learned A.R., also relies on the ruling in the case of Mongipa Roadways Pvt. Ltd. Vs. CCE, Delhi-I reported in 2012 (283) E.L.T. 280 (Tri.-Del.) where the appeal was dismissed for non-compliance of pre-deposit order and Honourable High Court had refused to interfere with the order of deposit in the case of the main appellant, and subsequently the appellant had deposited the amount of pre-deposit imposed on him, it was held that since the appellant failed to comply with the order of pre-deposit, his appeal is rightly dismissed.

5. Having considered the rival contentions, I find that the rulings relied upon by the revenue are not on the issue in this appeal. I further find that Commissioner (Appeals) have erred in dismissing the appeal without taking into notice the miscellaneous application which was pending and the same was not considered at the time of dismissal of the appeal. Accordingly in the interest of Justice I set aside the impugned order. Further deposit of 10% made by the appellant during pendency of this appeal is considered as sufficient for the purpose of hearing of the appeal before the Commissioner

(Appeals). Accordingly the ld. Commissioner Appeals is directed to hear the appellant on merits and dispose the appeal in accordance with law. The appeal is allowed by way of remand. The appellant is also directed to appear before the commissioner (Appeals) within 60 days, from receipt of a copy of this order, and seek opportunity of hearing.

(Dictated in the open court)

**(Anil Choudhary)**
**Member (Judicial)**

(K. Gupta)

प्रमाणित प्रति / Certified True Copy
6.4.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपीलीय अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M.G. MARG, ALLAHABAD-211001