FAX : 011-26108426 REGISTERED / AD

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

Dated: **20/01/2014**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/50130/2014-CU[DB]** dated **06/01/2014**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar(CUSTOMS Appeal Branch)

Application Appeal Name and Address of Appellant

1 ,ST/Stay/57418/2013 ST/56874/2013 **Gmtd Bsnl**
Pal Road Subhash Nagar
JODHPUR,
RAJASTHAN.

Name and Address of Respondent

2 **Commissioner of Central Excise and Service Tax-Jaipur-ii**
N C R BUILDING,
STATUE CIRCLE...C-SCHEME,
JAIPUR,
RAJASTHAN
302005

Copy To
3Advocate(s) / Consultant(s):

Om. P. Agarwal & co.
56, Section - 7, N.P.H Road,
Jodhpur,
Rajasthan

4 Bar Association, CESTAT, Delhi

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 C.D.R. **14** Office Copy **15** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/decision:06.01.2014

Service Tax Stay Application No.57418 of 2013 in
Appeal No.ST/56874 of 2013-CU(DB)

(Arising out of Order-in-Appeal No.192/RDN/ST/JPR-II/2012 dated 14.12.2012 passed by the Commissioner of Central Excise (Appeals-II), Jaipur)

M/s. Gmtd. Bsnl — Appellants

Vs.

CCE & ST, Jaipur-II — Respondent

For Approval and signature

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the order for Publication under Rule 27 of the CESTAT (Procedure) Rules, 1982.	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	Yes

Appearance: Rep. by Shri O.P. Agarwal, CA for the appellant.
Rep. by Shri U.K. Srivastava, DR for the respondent.

CORAM: Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No. 50130/2014 /Dated: 06.01.2014

Per Archana Wadhwa:

After dispensing with the condition of pre-deposit of dues, we proceed to decide the appeal itself inasmuch as the issue stands covered by the High Court's decision in the case of **CCE, Bangalore Vs. Bill Forge Pvt. Ltd. reported in 2011-TIOL0799-HC-KAR-CX.** As per facts on record, the appellant's availed 100% cenvat credit of duty paid on the capital goods, in the first year of its receipt, whereas they were only to avail 50% in the first year and the 50% in the next financial year. The proceedings were initiated against them for denial of credit as also for claim of interest and imposition of penalty.

2. The original adjudicating authority ~~dropped~~ confirmed confirmation of demand along with interest and imposed penalty. On appeal against the same, the Commissioner (Appeals) observed that the balance 50% credit was available to the assessee in the next financial year and as such, there is no justification for confirmation of the same. He also held that as there was no malafide on the part of the assessee and the excess availed credit was kept in the account books only and not utilized imposition of penalty was not justified. Accordingly, he set aside the confirmation of demand and penalty. However, he confirmed the interest of Rs.2,29,911/- by taking note of the Hon'ble Supreme Court's decision in the case of **UOI Vs. Ind-Swift Lab. Ltd. reported in 2011 (265) 3 ELT** .

3. Hence the present appeal.

4.. After hearing both the sides, we find that the short issue involved in the present case relates to the interest of Rs.2,29,911/-, confirmed by the lower authorities on the ground that even though the excess credit taken by the appellant was not utilized by them and remained only as a paper entry, who are liable to pay interest as per the declaration of law by the Hon'ble Supreme Court in the case of **Ind-Swift Lab (supra).**

5. We find that the Hon'ble Supreme Court's decision in the case of **Ind-Swift Lab. (supra)** was taken note of by the Hon'ble Karnataka High Court in the case of **CCE, Bangalore Vs. Bill Forge Pvt. Ltd. reported in 2011 -TIOL 799 HC-CX** and after interpreting the declaration of law by

the Hon'ble Supreme Court, the Hon'ble High Court held that where the excess credit availed is not utilized by the assessee and remained unutilized in their account books, the assessee cannot held liable to pay any interest. The said decisions of the Karnataka High Court in the case of **Bill Forge Pvt. Ltd. (supra)** sands followed by the Tribunal in the number of decisions. One such reference can be made to the Tribunal's decision in the case of **Gartex reported in 2013-TIOL-1931-CESTAT-DEL.** As we find that the Commissioner (Appeals) has categorically given a finding that credit was un-utilised and there is no dispute about the same, the ratio of law declared by the Hon'ble Karnataka High Court would be fully applicable. We accordingly set aside the confirmation of interest of Rs.2,29,911/-. We make it clear that the said order would not relate to interest amount which already stands deposited by the appellant in one of the show cause notices.

6. The stay petition as also appeal stand allowed in the above terms.

13/1/14
(Archana Wadhwa)
Member (Judicial)

15/1/14
(Rakesh Kumar)
Member (Technical)

Ckp.