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: 02/01/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/54794/2014-CU[DB]** dated **01/12/2014**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the **Customs Act, 1962.**

Asstt. Registrar(CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	C/Stay/54952/2014	C/54334/2014	**Commissioner of CUSTOMS-New Delhi(icd Tkd)** INLAND CONTAINER DEPORT, TUGLAKABAD...ICD, NEW DELHI,
			Name and Address of Respondent
2			PAVITRA INFRACON P LTD SHOP NO.26, DDA MARKET,VIKAS MARG, DEFENCE ENCLAVE, DELHI-110092

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Copy To

3 Advocate(s) / Consultant(s):

-

4 Additional Party's Name & Address :

5 Bar Association, CESTAT, Delhi

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

7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI – 110 066

Date of Hearing 01.12.2014

For Approval &Signature of :

Hon'ble Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Application No.C/STAY/54952/2014-CU[DB]
Appeal No.C/54334/2014-CU[DB]
[Arising out of Order-in-Appeal Nos.CC(A)CUS/ICD/305/2014, dated 24.04.2014 passed by the C.C.(Appeals), New Delhi]

C.C., New Delhi (ICD TKD) — Appellant

Vs.

M/s. Pavitra Infracon P. Ltd. — Respondent

Appearance
Shri Sajay Jain, DR - for the appellant

None - for the respondent

CORAM: **Hon'ble Justice G. Raghuram, President**
Hon'ble Mr. R.K. Singh, Member (Technical)

Final Order No. 54794/2014, **dated 01.12.2014**

Per Mr. R.K. Singh :

Revenue has filed appeal along with Stay Application against Order-in-Appeal Nos. CC(A)CUS/ICD/305/2014, dated 24.04.2014.

2. In this case, the respondents were allowed vide Dy. Commissioner's letter dated 28.02.2014 provisional release of the seized goods imported by them under five Shipping Bills on execution of bank guarantee of Rs.51,38,063/- bond for re-determined value of goods (Rs.5,13,80,625/-) and submission of solvency certificate. The importers being aggrieved by the allegedly harsh conditions of provisional release filed appeal before commissioner (Appeals) on the ground that such orders are appealable as held by High Court of Delhi in W.P. No.1670/2014.

3. The commissioner (Appeals) vide the impugned order held as under:-

> *"4. On perusal of provisional release order, it is seen that declared value of goods, nature of offence, are not forthcoming in the said letter. Furthermore, at what level the decision to allow provisional release has been taken, is also not forthcoming. Since provisional release orders are appealable, these are required to be speaking orders. The impugned order has also been issued, without hearing the appellant.*
>
> *5. Therefore, the letter of provisional release is set aside, with a direction to the field officer for issue of a quick provisional release order within 21 days of receipt of this order and also taking into consideration case laws, available on the subject."*

4. Revenue is in appeal on the ground that the Hon'ble High Court of Delhi's judgement referred to above is at variance with CBEC letter F.No.415/164/2013-CUS VI, dated 04.09.2013 which holds that orders under section 110A of Customs Act, 1962 are not appealable and that they are filing appeal against the decision of High Court of Delhi.

5. Heard both sides. High Court of Delhi in the case of W.P.No.1670/2014 has held as under:-

> *"Even though the show-cause notice has not been concededly issued yet the nature of the orders, passed by the adjudicating authority or the Deputy Commissioner as in this case do have consequence. As such these orders cannot be characterized as merely administrative but made under specific provisions of statutory regulations. They fall within the description of order or decision even on the question of the appropriateness of conditions, with respect to provisional clearance and, therefore, this Court is of the opinion that the impugned order is appealable."*

6. In the light of the order of the High Court of Delhi, which has not been stayed or set aside, ~~the~~ Board's circular dated 04.09.2013 is of no consequence. Merely because an SLP is proposed to be filed against the said orders of the High Court of Delhi does not in any way eclipse its binding force. Thus, the impugned order suffers from no appealable infirmity. Consequently, Revenue's appeal is dismissed. The stay application is also dismissed as infructuous.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

SSK