[redacted]EGCANAL
[redacted]w.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/1423/2010-1427/2010,1518/2010,2376/2010-2377/2010,2459/2010-2460/2010,3222/2010-3224/2010 - EX[DB] Date **05/05/2011**
E/S/3014-3016,1454-1458,1545,2212-2213,2270-2271/2010-EX
Assistant Registrar E/M/42/2011 & E/COD/414-416/2010-EX
C.E.S.T.A.T, New Delhi

To :
M/S S.B. AROMATICS,
MOHALLA-MAHAJAN,
CHANDAUSI,
DISTT. MORADABAD.

M/S S.B. AROMATICS, Appellant
Vs
C.C.E. MEERUT II Respondent

MISC ORDER NO. 265-268/2011-EX
STAY ORDER NO.516-528/2011-EX

I am directed to transmit herewith a certified copy of **Final order No.398-410/ 2011 EX[DB]** dated 25-4-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. MEERUT II
OPP. SAHEED PARK (NEAR
ASHOK KI LAT) DELHI ROAD,
MEERUT (UP)

2. Adv. / Consult
MR.LASA CONSULTANCY (P) LTD.
C-15, 16, HARTHALA INDUSTRIAL AREA, KANTH ROAD, MORADABAD (UP)

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
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. Guard file
14. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

P.T.O.-2,3

15 • M/S JAY AMBEY CORPORATION,
11A MAHENDRA INDUSTRIAL ESTATE, 2ND FLOOR, SION FORT ROAD, SION (EAST), MUMBAI-400022

16 • M/S. VAISHNO INTERNATIONAL
PLOT NO.96, PHASE-III, SICOP INDUSTRIAL AREA, KATHUA, JAMMU (JK)

17 • SHRI GUNVANT H. DESAI,
11/11A MAHENDRA INDUSTRIAL ESTATE, 2ND FLOOR, FORT GARDEN ROAD, SION (EAST), MUMBAI-400022

18 • SMT. PREETI KAPOOR, PARTNER
M/S. VAISHNO INTERNATIONAL 39, RAHE-RAZA, CIVIL LINES RAMPUR, DISTT. RAMPUR

19 • SHRI L.K.VARSHNEY, DIRECTOR
M/S. HINDUSTAN MINT & AGRO PRODUCTS PVT. LTD. BAREHSENI STREET, CHANDAUSI, DISTT. MORADABAD.

20 • SHRI S.K.JINDAL, DIRECTOR,
M/S JINDAL DRUGS LTD. PLOT NO. 1A, INDUSTRIAL AREA, EXTENSION-III, GANGYAL, JAMMU.

21 • M/S JINDAL DRUGS LTD.
PLOT NO. 1A, INDUSTRIAL AREA, EXTENSION-III, GANGYAL, JAMMU.

22 • SHRI PHOOL PRAKASH, MANAGING DIRECTOR
M/S. HINDUSTAN MINT & AGRO PRODUCTS PVT. LTD. BAREHSENI STREET, CHANDAUSI, DISTT. MORADABAD.

23 • SHRI ROHIT AGARWAL, PARTNER OF
M/S S.B. AROMATICS, MODULAR INDUSTRIAL ESTATE, BLOCK-B, EPIP, KARTHOLI, BARI BRAHAMANA, JAMMU.

24 • M/S. HINDUSTAN MINT & AGRO PRODUCTS PVT. LTD.
DEVARKHERA, MORADABAD ROAD, CHANDAUSI, DISTT. MORADABAD
(UP)

25 • SHRI ATUL KUMAR, PARTNER OF
M/S S.B. AROMATICS, MOHALLA-MAHAJAN,
CHANDAUSI,
DISTT. CHANDAUSI.

26 • SHRI B K VARSHNEY, DIRECTOR
M/S. HINDUSTAN MINT & AGRO PRODUCTS PVT. LTD. BAREHSENI STREET,
CHANDAUSI. DISTT. MORADABAD.

27. PDS LEGAL
EXPRESS TOWERS
20TH FLOOR, NARIMAN POINT
MUMBAI-21

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 25.04.2011

Excise COD Application No. 414 of 2010, Excise Stay No. 3014 of 2010 in Excise Appeal No. 3222 of 2010

M/s S.B. Aromatics   Appellants

Vs.

CCE, Meerut-II   Respondent

AND

Excise COD Application No. 415 of 2010, Excise Stay No. 3015 of 2010 in Excise Appeal No. 3223 of 2010

Atul Kumar   Appellants

Vs.

CCE, Meerut-II   Respondent

AND

Excise COD Application No. 416 of 2010, Excise Stay No. 3016 of 2010 in Excise Appeal No. 3224 of 2010

Rohit Agarwal   Appellants

Vs.

CCE, Meerut-II   Respondent

Appearance:

Rep. by Sh. R.L. Thapliyal, Advocate for the appellants.
Rep. by Sh. Nitin Anand, DR for the respondent.

Coram: **Hon'ble Sh. Justice R.M.S. Khandeparkar, President**
Hon'ble Sh. Mathew John, Member (Technical)

Misc. ORAL ORDER NO. 215-218/2011-Ex.

Per: Shri Justice R.M.S. Khandeparkar:

Heard the learned Advocate for the appellants and DR for the respondent. In view of the fact that the delay is of only two days and having been sufficient cause explained, the application is allowed. Delay is condoned. Applications stand disposed of accordingly.

(Justice R.M.S. Khandeparkar)
President

(Mathew John)
Member (Technical)

Pant

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 25.04.2011

1. Excise Stay No. 3014 of 2010 in Excise Appeal No. 3222 of 2010

M/s S.B. Aromatics Appellants

Vs.

CCE, Meerut-II Respondent

AND

2. Excise Stay No. 3015 of 2010 in Excise Appeal No. 3223 of 2010

Atul Kumar Appellants

Vs.

CCE, Meerut-II Respondent

AND

3. Excise Stay No. 3016 of 2010 in Excise Appeal No. 3224 of 2010

Rohit Agarwal Appellants

Vs.

CCE, Meerut-II Respondent

AND

4. Excise Stay No. 1454 of 2010 in Excise Appeal No. 1423 of 2010 & E/Misc. No. 42 of 2011

M/s Hindustan Mint & Agro Products Pvt. Ltd. Appellants

Vs.

CCE, Meerut-II Respondent

AND

5. Excise Stay No. 1455 of 2010 in Excise Appeal No. 1424 of 2010

M/s Vaishno International — Appellants

Vs.

CCE, Meerut-II — Respondent

AND

6. Excise Stay No. 1456 of 2010 in Excise Appeal No. 1425 of 2010

L.K. Varshney, Director — Appellants

Vs.

CCE, Meerut-II — Respondent

AND

7. Excise Stay No. 1457 of 2010 in Excise Appeal No. 1426 of 2010

Phool Prakash, M.D. — Appellants

Vs.

CCE, Meerut-II — Respondent

AND

8. Excise Stay No. 1458 of 2010 in Excise Appeal No. 1427 of 2010

B.K. Varshney — Appellants

Vs.

CCE, Meerut-II — Respondent

AND

9. Excise Stay No. 1545 of 2010 in Excise Appeal No. 1518 of 2010

Preeti Kapoor, partner — Appellants

Vs.

CCE, Meerut-II — Respondent

AND

10. Excise Stay No. 2212 of 2010 in Excise Appeal No. 2376 of 2010

M/s Jindal Drugs Ltd. Appellants

Vs.

CCE, Meerut-II Respondent

AND

11. Excise Stay No. 2213 of 2010 in Excise Appeal No. 2377 of 2010

S.K. Jindal Appellants

Vs.

CCE, Meerut-II Respondent

AND

12. Excise Stay No. 2270 of 2010 in Excise Appeal No. 2459 of 2010

M/s Jay Ambey Corporation Appellants

Vs.

CCE, Meerut-II Respondent

AND

13. Excise Stay No. 2271 of 2010 in Excise Appeal No. 2460 of 2010

Gunvanth Desai Appellants

Vs.

CCE, Meerut-II Respondent

Appearance:

Sl. Nos. 1-3 & 9 - Rep. by Sh. R.L. Thapliyal, Advocate for the appellants.
Sl. No. 4 to 8- Rep. by Sh. R. Santhanam, Advocate
Sl. No. 10 & 11- None
Sl. No. 12 -13 – Rep. by Sh. G.K. Sarkar, Advocate

Rep. by Sh. Nitin Anand, DR for the respondent.

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President
Hon'ble Sh. Mathew John, Member (Technical)

STAY ORAL ORDER NO. 516 - 528/2011-EX

Per: Shri Justice R.M.S. Khandeparkar:

Heard the learned Advocates for the appellants and DR for the respondent.

2. As we propose to dispose of the appeals themselves, the applications are allowed without insisting for any deposit while directing the registry to place the corresponding appeals for hearing forthwith.

3. Applications stand disposed of accordingly.

(Justice R.M.S. Khandeparkar)
President

(Mathew John)
Member (Technical)

Pant

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-I

Date of hearing/decision: 25.04.2011

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	Yes
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

1. Excise Appeal No. 3222 of 2010
(Arising out of order-in-original No. 68-82/COMMR/M-II/2010 dated 29.01.2010 passed by the Commissioner of Central Excise, Meerut)

M/s S.B. Aromatics — Appellants

Vs.

CCE, Meerut-II — Respondent

AND

2. Excise Appeal No. 3223 of 2010
(Arising out of order-in-original No. 68-82/COMMR/M-II/2010 dated 29.01.2010 passed by the Commissioner of Central Excise, Meerut)

Atul Kumar , Partner — Appellants

Vs.

CCE, Meerut-II — Respondent

AND

3. Excise Appeal No. 3224 of 2010

(Arising out of order-in-original No. 68-82/COMMR/M-II/2010 dated 29.01.2010 passed by the Commissioner of Central Excise, Meerut)

Rohit Agarwal — Appellants

Vs.

CCE, Meerut-II — Respondent

AND

4. Excise Appeal No. 1423 of 2010

(Arising out of order-in-original No. 68-82/COMMR/M-II/2010 dated 29.01.2010 passed by the Commissioner of Central Excise, Meerut)

M/s Hindustan Mint & Agro Products Pvt. Ltd. — Appellants

Vs.

CCE, Meerut-II — Respondent

AND

5. Excise Appeal No. 1424 of 2010

(Arising out of order-in-original No. 68-82/COMMR/M-II/2010 dated 29.01.2010 passed by the Commissioner of Central Excise, Meerut)

M/s Vaishno International — Appellants

Vs.

CCE, Meerut-II — Respondent

AND

6. Excise Appeal No. 1425 of 2010

(Arising out of order-in-original No. 68-82/COMMR/M-II/2010 dated 29.01.2010 passed by the Commissioner of Central Excise, Meerut)

L.K. Varshney, Director — Appellants

Vs.

CCE, Meerut-II — Respondent

AND

7. Excise Appeal No. 1426 of 2010

(Arising out of order-in-original No. 68-82/COMMR/M-II/2010 dated 29.01.2010 passed by the Commissioner of Central Excise, Meerut)

Phool Prakash, M.D. Appellants

Vs.

CCE, Meerut-II Respondent

AND

8. Excise Appeal No. 1427 of 2010

(Arising out of order-in-original No. 68-82/COMMR/M-II/2010 dated 29.01.2010 passed by the Commissioner of Central Excise, Meerut)

B.K. Varshney Appellants

Vs.

CCE, Meerut-II Respondent

AND

9. Excise Appeal No. 1518 of 2010

(Arising out of order-in-original No. 68-82/COMMR/M-II/2010 dated 29.01.2010 passed by the Commissioner of Central Excise, Meerut)

Preeti Kapoor, partner Appellants

Vs.

CCE, Meerut-II Respondent

AND

10. Excise Appeal No. 2376 of 2010

(Arising out of order-in-original No. 68-82/COMMR/M-II/2010 dated 29.01.2010 passed by the Commissioner of Central Excise, Meerut)

M/s Jindal Drugs Ltd. Appellants

Vs.

CCE, Meerut-II Respondent

AND

11. Excise Appeal No. 2377 of 2010

(Arising out of order-in-original No. 68-82/COMMR/M-II/2010 dated 29.01.2010 passed by the Commissioner of Central Excise, Meerut)

S.K. Jindal, Director Appellants

Vs.

CCE, Meerut-II Respondent

AND

12. Excise Appeal No. 2459 of 2010

(Arising out of order-in-original No. 68-82/COMMR/M-II/2010 dated 29.01.2010 passed by the Commissioner of Central Excise, Meerut)

M/s Jay Ambey Corporation Appellants

Vs.

CCE, Meerut-II Respondent

AND

13. Excise Appeal No. 2460 of 2010

(Arising out of order-in-original No. 68-82/COMMR/M-II/2010 dated 29.01.2010 passed by the Commissioner of Central Excise, Meerut)

Gunvanth H. Desai Appellants

Vs.

CCE, Meerut-II Respondent

Appearance:

Sl. Nos. 1-3 & 9 - Rep. by Sh. R.L. Thapliyal, Advocate for the appellants.

Sl. No. 4 to 8- Rep. by Sh. R. Santhanam, Advocate

Sl. No. 10 & 11- None

Sl. No. 12 -13 – Rep. by Sh. G.K. Sarkar, Advocate

Rep. by Sh. Nitin Anand, DR for the respondent.

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Mathew John, Member (Technical)

FINAL Oral Order No. 398-410/2011-EX

Per Shri Justice R.M.S. Khandeparkar:

Since common questions of law and facts are involved in all these matters, they were heard together and are being disposed of by this common order.

2. Though, the impugned order is sought to be challenged on various grounds, it is not necessary to address to all those grounds and suffice to refer to only one ground sought to be raised on behalf of M/s Hindustan Mint and Agro Products Pvt. Limited who is the main assessee in the matter.

3. Learned Advocate for the said appellants company submitted that the impugned order was passed without giving fair opportunity of being heard to the appellants. He submitted that matter was fixed for hearing on 04.12.2009 but the notice in that regard was received by the appellants only on 03.12.2009. The appellants' representative was not permitted to leave the territorial jurisdiction of Moradabad District without prior permission of Special Chief Judicial Magistrate of Meerut and it was not possible for the appellants to obtain such permission within short span of time and to appear before the Commissioner at Meerut on 04.12.2009. Appellants, therefore, under letter dated 04.12.2009 informed the said fact to the Commissioner. Though, the Commissioner's office received the said application, the Commissioner ignored the same and proceeded to decide the matter thereby denying fair opportunity to the appellants of being heard in the matter. Learned Advocate for the other appellants submitted that since their liability

flow from the alleged default on the part of the appellants M/s Hindustan Mint and Agro Products Pvt. Limited, any interference in the impugned order at the instance of the said appellants company would also entitle the other appellants to challenge the impugned order.

4. Perusal of the impugned order discloses that the appellants had not been regular in attending the hearing before the Commissioner. However, it is also apparent from the record that as regards the hearing which was fixed on 04.12.2009, notice thereof was received by the appellants Director only on 03.12.2009 and the appellants' Director could not have left the territory of Moradabad to attend the hearing before the Commissioner at Meerut without prior permission of Special Chief Judicial Magistrate at Meerut, as at the relevant time such restrictions were imposed upon the movement of the said Director. This fact was brought to the notice to the Commissioner, Meerut by the appellants under their letter dated 04.12.2009. Copy of the said letter was received in the office of Commissionerate and it is apparent that the said letter was in fact received in the office of Commissioner, Meerut on 04.12.2009, yet the impugned order merely records that inspite of service of notice, the appellants did not appear and adopted delay tactics. It is true that records disclose that on earlier occasion also the appellants had failed to appear for personal hearing but had filed the applications for adjournment. Undoubtedly, the same could be sufficient to contend that the appellants were adopting delay tactics but that by itself cannot be said to be justifiable ground to deny the opportunity of being heard in the matter to the appellants. Admittedly, the matter was fixed for hearing on 04.12.2009 and notice in that regard was not received by the appellants well in advance. It

was received only on 03.12.2009. Due to restrictions imposed on the movement of the Director of the appellants company, without prior permission of Special Chief Judicial Magistrate, Meerut, it was indeed impossible for the appellants to appear before the Commissioner at Meerut on 04.12.2009 in response to the notice. This fact was in fact brought to the notice of the office of Commissioner. In those circumstances, it was necessary to take note of the said fact and to fix the matter for further hearing by the Commissioner. The Commissioner having failed to do so, the impugned order cannot be sustained against the appellants company and for the same reason against other appellants, as rightly submitted by the learned Advocate for the appellants as setting aside the order against the said company would automatically result in setting aside of the order against the other appellants.

5. In the circumstances, the appeals have to be allowed on the limited ground as stated above without expressing any opinion on the merits of the case.

6. Appeals are accordingly allowed. The impugned order is hereby set aside and matter is remanded to the Commissioner, Meerut to give opportunity of being heard to the appellants and then to pass the appropriate order in accordance with provision of law. The appellants shall appear before the Commissioner, Meerut on 16.05.2011 at 11.30 a.m. for further proceedings in the matter. The department shall issue notice to the appellants in Appeal Nos. 2316 & 2377 of 2010 regarding such appearance to the appellants in those appeals. As regards other appellants, Learned

Advocates for those appellants have taken note of the next date of hearing and therefore there is no need of issuing any notice to them. In case the department has not furnished any of the copy of the relied upon documents to the assessees, same shall also be furnished within four weeks from today to the assessees.

(Justice R.M.S. Khandeparkar)
President

(Mathew John)
Member (Technical)

/Pant/