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

Date 09/04/2012

Appeal No. E/712-713 /2010 - EX[DB]

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S. KHATEMA FIBRES LIMITED. ← M/s SH. R.C. RASTOGI,
403-405, VIKAS DEEP BUILDING, DISTRICT CENTRE,
LAXMI NAGAR, DELHI
110092

M/S. KHATEMA FIBRES LIMITED. Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/423-424/ 2012 EX[DB]** dated 03-4-12 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 SH. C. HARI SHANKAR, ADV.,
46, BANK ENCLAVE,
N. DELHI-92
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-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,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

Assistant Registrar
(Excise Appeal Branch)

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

Date of hearing/decision:3.4.2012.

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, 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.	
2	Whether it should 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 Departmental authorities?	

Excise Appeals Nos.712 & 713 of 2010

M/s.Khatima Fibres Ltd.
Shri R.C. Rastogi ...Appellants

Vs.

CCE, Meerut ...Respondent

Coram: Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr.Rakesh Kumar, Member (Technical)

Appearance:
Shri C. Hari Shankar, Advocate for the appellants.
Shri Nagesh Pathak, DR for the respondent.

FINAL Order Order No. A/423-424/2012-EX(BR)

Per Justice Ajit Bharihoke:

The instant appeal was filed against the order of the Commissioner dated 18.12.2009 confirming the duty demand to the tune of Rs.15,81,69,274/- along with interest and equal amount of penalty besides penalty of Rs.50 Lakhs on Shri R.C. Rastogi, C.M.D. of the appellant company and Rs.5 Lakhs on the Chartered Engineer of the appellant company. The appeal was accompanied by an application for stay being application number E/Stay/742 of 2010 seeking waiver of the condition of pre-deposit as a pre-condition for hearing of appeal. The stay application was disposed of vide Order dated 30.08.2010, whereby the appellant company was directed to deposit 60% of the duty amount within 10 weeks from the date of the order and pre-deposit of balance amount of interest and penalty was waived till the disposal of the appeal. It was further ordered that in case the appeal does not become ripe for final disposal within a period of three years from the date of that order, the appellant shall be liable to deposit 40% of the duty amount within ten weeks on expiry of three years from the date of the order.

2. The appellant failed to comply with the order and moved an application for modification of stay order, which application was rejected vide order dated 22.2.2012 and the time for pre-deposit was extended by

further period of 4 weeks from the date of signing of the order. Despite that the appellant has failed to comply with the order.

3. It is submitted that the appellant intends to file a writ petition against the order of the Tribunal. The writ petition could not be filed earlier as the appellant received certified copy of relevant order rejecting the application for modification of stay order only on 29.03.2012. As such, ld. Counsel seeks further extension of time to deposit the amount in terms of the order on stay application.

4. We do not find any merit in the application for further extension for deposit of 60% of the duty demand for the reason that perusal of the Misc. Order No.266/2012 dated 22.2.2012 would show that this order was passed in presence of Shri C. Hari Shankar, ld. Counsel for the appellant. If at all, the appellant wished to file writ petition against the Order dated 22.02.2012, he ought to have exercised the option within a reasonable period. Admittedly, certified copy of the order was received on 29.3.2012. If the appellant was keen in filing the writ petition, he could have filed the writ petition by now, which has not been done. Therefore, we do not find any justification for extension of time for deposit. Accordingly, application for extension of time to deposit 60% of duty demand is dismissed.

5. Admittedly petitioner has failed to deposit 60% of duty demand as per order dated 30.08.2010 and extension granted vide order dated 22.2.2012. Therefore, we are left with no alternative but to dismiss the appeal on account of non-compliance with the mandate of Section 35 F of the Central Excise Act.

6. Both the appeals are disposed of.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Ckp.