

FAX : 011-26108426

REGISTERED / AD

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

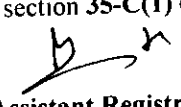
Dated: 02/11/2012

To

1. Appellant as per address in table below
2. Respondent as per address in table below

Final Order No. A/1296/2012-EX[DB], Stay Order No. SO/1822/2012 and dated 26/10/2012

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.


Assistant Registrar
EXCISE Appeal Branch

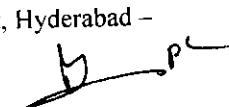
S.No	Application	Appeal	Name and Address of Appellant	Name and Address of Respondent
1.	E/Stay/510/2012, E/455/2012		HINDUSTAN COCA COLA BEVERAGES PVT LTD Mehandiganj, Rajatalab, Varanasi.	C.C.E Allahabad 38, M.G. Marg, civil Lines, Allahabad

Copy To

1. Advocate(s) / Consultant(s): *MS. KHASURIA, ADV.,*
CIC APPELLANT.

2. C.D.R 3. Office Copy 4. Guard File

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, Ameer Pet, Hyderabad - 500038


Assistant Registrar
EXCISE Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 26.10.2012

Stay Application No.510 of 2012 in Central Excise Appeal No.455 of 2012

Arising out of the order in appeal No.241/CE/ ALLD/2011 dated 21.11.2011 passed by the Commissioner (Appeals), Central Excise, Allahabad.

For Approval and Signature:

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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?	

Hindustan Coca Cola Beverages Pvt. Ltd. .. Appellant

Vs.

C.C.E., Allahabad .. Respondent

Present for the appellant : Ms. S. Khajuria, Advocate

Present for the Revenue : Shri A.K. Jain, A.R.

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

STAY order No. 1822/2012 B+CBB
FINAL Order No. A/1296/2012 B+CBB

Per Mr. Justice Ajit Bharihoke (Oral):

This appeal is directed against the order in appeal No. 241/CE/ALLD/2011 dated 21.11.2011 passed by the Commissioner (Appeals), Central Excise, Allahabad whereby he dismissed the appeal filed by the appellant against the order in original dated 29.1.2010 on the ground that appeal was barred by limitation.

2. The case of the Department is that order in original was dispatched to the appellant through speed post on 2nd February 2010. The aforesaid order was not received back undelivered. As such there is a legal presumption that the order in original was duly served on the appellant. Commissioner (Appeals) raising aforesaid presumption took the plea that the appeal was filed by the appellant sixty days after the service of adjudication order. As such it was time barred.

3. The case of the appellant is that appellant did not receive the order in original allegedly sent through speed post and he actually received the matter on 5.5.2011 and the appeal was filed within limitation period of thirty days from 5.5.2011.

4. Today, the matter is listed for hearing on argument on stay application. However after hearing the parties and going through the record we feel that appeal itself can be disposed off, therefore, we have proceeded to hear the appeal.

5. Ms. Shireen Khajuria, Ld. Advocate for the appellant has contended that the Commissioner (Appeals) has committed a grave error in raising presumption of service of the order in original sent through speed post ignoring the fact that as per Section 37C of the Central Excise Act, 1944 the service by speed post is not a recognized mode of service. She further contended that otherwise also the Department has failed to establish that the appellant was actually served with order in original sent through speed post. Thus she has urged us to set aside the impugned order and remand the matter back to the Commissioner (Appeals) for hearing of appeal on merits.

6. Shri A.K. Jain, Ld. Jt. CDR on the contrary has argued in support of the impugned order passed by the Commissioner (Appeals). He has drawn our attention to photocopy of the postal receipt regarding

dispatch of order in original on 2.2.2010 and submitted that from this postal receipt it is amply proved that the order in original was dispatched to the appellant through postal mode and since it was not received back undelivered there is presumption of service on the assessee. Thus according to the Jt. CDR, there is no infirmity in the impugned order.

7. We have considered the rival contentions and perused record. On perusal of the impugned order we find that the Commissioner (Appeals) has dismissed the appeal against the order in original as time barred drawing a legal presumption that order in original sent to the assessee through speed post must have been delivered to the appellant as it was not received back undelivered. In our view the Commissioner (Appeals) was not justified in raising aforesaid presumption particularly when there is no evidence on record that the order in original was dispatched at the correct address of the appellant. On perusal of the photocopy of postal receipt pertaining to the dispatch of order in original we find that it does not contain complete address of the appellant. That being the case, it cannot be concluded that the order in original was actually sent at the correct address of the appellant. In the absence of firm evidence in this regard, no presumption can be drawn that the order in original must have been delivered to the appellant. Thus we find it difficult to sustain the order of Commissioner (Appeals). Only recognized mode as per Section 37C is the registered A.D. post.

8. In view of the discussion above, we set aside the impugned order dismissing the appeal filed by the appellant against the order in original on the ground of limitation and remand the matter back to the Commissioner (Appeals) with the direction to hear the appeal filed by the assessee on merits and decide it after giving ^{due &} ~~due~~ hearing to the ~~party~~. *Parties &*

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/