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

STAY Application No. : E/Stay/1563/2012
Appeal No. : E/1244/2012-EX[DB]

Dated: **15/06/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
Ind Synergy Ltd
Gokulpuram, Kachna Road, Khamardih,
Raipur-492007 (chhattisgarh)

Ind Synergy Ltd (Appellant)

VS

C.C.E. & S.T.-Raipur (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/A/682/2012-EX[DB]** & STAY ORDER NO. 917/2012-EX

dated **05/06/2012** passed by the Tribunal under section

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
C.C.E. & S.T.-Raipur
CENTRAL EXCISE
BUILDING...DHAMTARI
ROAD...TIKRAPARA...RAIPUR,492001

2. **Advocate(s) / Consultant(s):**
RAMESH NAIR
LAKSHMI VIHAR, AG- 192, SCHEME
NO. 54, VIJAYNAGAR, INDORE(MP)

3. C.D.R
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING/DECISION : 05/06/2012.

Excise Stay Application No. 1563 of 2012 in Appeal No. 1244 of 2012

M/s Ind Synergy Ltd. Appellant

Versus

CCE, Raipur Respondent

[Arising out of the Order-in-Original No. Commissioner/RPR/CEX/ 07-08/2012 dated 31/01/2012 passed by The Commissioner (Appeals), Central Excise & Customs, Raipur.]

Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri 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 would 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 Department Authorities?	:

Appearance

Shri Ramesh Nair, Advocate – for the Appellant.

Shri Nagesh Pathak, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

STAY order No. 917/2012 - EX (BR)
FINAL Order No. A/682/2012-EX (BR)

Per. Shri Rakesh Kumar :-

The appellant are manufacture of sponge iron chargeable to Central Excise duty. The period of dispute in this case is from 2005-2006 to September 2010 during which period the appellant took Cenvat credit of Rs. 12,97,81,254/- on MS Angles, plates, Channels, Joists, Beams etc., which according to them were used for fabrication of machinery and parts, components and accessories thereof. The department being of the view that these items have not been used for this purpose, but have been used only for foundation and supporting structures for the machinery and, hence, not eligible for Cenvat credit, issued two show cause notices SCN dated 4th June 2010 for recovery of allegedly wrongly taken credit of Rs. 12,93,95,227/- and show cause notice dated 22/12/10 as amended by corrigendum dated 28/9/11, for recovery of allegedly wrongly taken credit of Rs. 3,86,529/-. Both the show cause notices, besides Cenvat credit also sought recovery of interest and also imposition of penalty. Both the show cause notices were adjudicated by the Commissioner vide order-in-original dated 31st January 2012 by which the above-mentioned demands of the Cenvat credit were confirmed alongwith interest and penalty of equal amount was imposed on the appellant under Rule 15 (2) of the Cenvat Credit Rules, 2004. Against this order of the Commissioner, this appeal alongwith stay application has been filed.

2. Heard both the sides in respect of stay application.

3. Though this matter was today listed for hearing of stay application only, after hearing both the sides for sometime, we were of the view that this matter can be taken up for final disposal. Accordingly, the requirement of pre-deposit is waived and with the consent of both the sides, the matter is heard for final disposal.

4. Both the sides agree that this matter has been adjudicated without hearing to the appellant, in person and without waiting for the appellant's replies to the show cause notices, which is clear from para 3.2 and 3.3 of the impugned order. In view of this, the impugned order is not sustainable. The same is set aside and the matter is remanded to the Commissioner for denovo adjudication after taken into account appellant's reply to the show cause notice and granting personal hearing. The appellant shall file reply to the show cause notice within a period of four weeks from the date of this order. The appeal and stay application stand disposed, as above.

(Dictated and pronounced in the open court)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

PK