TELEGRAM : CEGCANAL
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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

STAY Application No. : E/Stay/888/2012, E/Stay/889/2012
Appeal No. : E/724/2012-EX[DB], E/725/2012-EX[DB]

Dated: **15/10/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
BAJAJ HINDUSTHAN LIMITED
Unit:Gola Gokaran Nath District-
Lakhimpur Kheri(UP)

BAJAJ HINDUSTHAN LIMITED (Appellant)

VS

C.C.E. LUCKNOW (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/1217-1218/2012-EX[DB]**, Stay Order No. **SO/1720-1721/2012** and dated **26/09/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
C.C.E. LUCKNOW
7-A, Ashok Marg, Lucknow.

2. Advocate(s) / Consultant(s):
PRADEEP KUMAR MITTAL ADV.
171-CHITRA VIHAR,
DELHI
110092

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. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

13. Office Copy

14. Gaurd File

17/12

Assistant Registrar
EXCISE Appeal Branch

15. **BAJAJ HINDUSTHAN LIMITED**
Unit:Palia Kalan District- Lakhimpur
Kheri(UP)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

Date of hearing/decision: 26.09.2012

Stay Applications Nos.E/888-889 of 2012
Central Excise Appeals Nos.E/724-725 of 2012

(Arising out of the order-in-appeals No.48 & 49/CE/LKO/2012 dated 8.2.2012 passed by the Commissioner (Appeals), Central Excise, Lucknow).

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?	

Bajaj Hindustan Ltd. .. Appellant

Vs.

C.C.E., Lucknow .. Respondent

Present for the appellant : Shri P.K. Mittal, Adv.
Present for the respondent : Shri R.K. Verma, A.R.

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

STAY Order No. 1720 - 1721/2012-EX (BR)
FINAL Order No. A/1217-1218/2012-EX (BR)

Per Mr. Rakesh Kumar:

Though these matters are listed only for hearing of stay applications, after examining the records and hearing both the sides, we are of the view that the appeals can be finally decided, as only a short issue is involved. Accordingly, with the consent of both the sides, after dispensing with pre-deposit, the appeals are taken up for final disposal.

2. The issue involved in these cases is as to whether for the calculation of education cess, sugar cess collected under Sugar Development Fund Act, 1982 is to be included in the Central Excise duty. Both the sides agree that this issue stands decided in favour of the Appellant by the judgments of the Tribunal in the cases of **Sahakari Khand Udyog Mandli Limited vs. C.C.E. reported in 2008 (232) ELT 61 (Tri-Ahmd.)** and **Bombay Burmah Trading Corporation Ltd. vs. C.C.E. reported in 2008 (221) ELT 105 (Tri-Chennai)** and by Hon'ble Himachal Pradesh High Court in the case of **Indo Farm Tractors & Motors Ltd. vs. UOI reported in 2008 (222) ELT 184 (HP)** wherein it has been held that education cess under Section 93 of the Finance Act, 2004 is chargeable only on the duties of excise levied and collected by the Central Government in the Ministry of Finance (Department of Revenue)

3. In view of this, the impugned orders are not sustainable. The same are set aside. The appeals as well as stay applications are allowed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

Ckp.