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: **27/11/2012**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/1327/2012-EX[DB]**, Stay Order No. **SO/1911/2012** and dated **22/11/2012**

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.**

Asstt. Registrar(EXCISE Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	E/Stay/1076/2012	E/872/2012	**Shervani Industries Synidicate Ltd** 332, Sulem Sarai, Shervani Nagar, Harwara, Allahabad (u.p.)

Name and Address of Respondent

2 **C.C. & C.E. & S.T.-Allahabad**
38...M G MARG...
CIVIL LINES,
ALLAHABAD,
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Copy To
3Advocate(s) / Consultant(s):

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4 Bar Association, CESTAT, Delhi

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar(EXCISE Appeal Branch)

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

Date of hearing/decision: 22.11.2012

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. 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 Appeal No. 872 of 2012 with Excise Stay No. 1076 of 2012
(Arising out of order in appeal No. 05-CE/ALLD/2012 dated 06.01.2012 passed by Commissioner (Appeals), Central Excise, Allahabad).

M/s Shervani Industrial Syndicate Ltd. Appellants

Vs.

CCE, Allahabad Respondent

Present Sh. Nageshwar Rao, Advocate for the appellants.
Present Sh. Sanjay Jain, AR for the respondent.

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

STAY ORDER No. 1911/2012-Ex(BR)
FINAL ORDER NO. A/1327/2012-Ex(BR)

Per: Rakesh Kumar:

This is an appeal against order-in-appeal dated 06.01.2012 passed by Commissioner of Central Excise (Appeals) Allahabad in pursuance of the final order No. 752 of 2011-Ex dated 12.08.2011 passed by the Tribunal remanding the matter to the Commissioner (Appeals) for denovo adjudication with the following observation:-

> *"....... The matter is remanded to Commissioner (Appeals) for denovo adjudication in course of which the assessable value should be determined strictly in accordance with the clarificatory judgment of Hon'ble Supreme Court in the case of Ujagar Prints etc. etc. vs. Union of India & others (supra). While deciding the matter on merit, the issue of time bar may also be decided after ascertaining as to whether the respondent had informed the department about their job work agreement with WSIL which included an incentive clause. The appeal stands disposed of, as above."*

2. Heard both the sides. Though this matter is listed for hearing of stay application, after hearing both the sides for some time we are of the view that the matter can be taken for final disposal. Accordingly, the requirement of pre-deposit is waived and with the consent of both the sides matter was heard for final disposal.

3. Shri Nageshwar Rao, Advocate, the ld. Counsel for the appellant pleaded that while the Tribunal in the remand order had given a clear direction that the Commissioner (Appeals) must ascertain as to whether the appellant in this case had informed the department about their job work agreement with WSIL, which included an incentive clause and on this basis the issue regarding time bar must be decided, the Commissioner (Appeals) in course of denovo proceedings, while deciding the matter ex-parte has gone by the presumption that the appellant had not informed the department about the filing of copy of the job work agreement; that

this is factually incorrect, that as is clear from letter dated 08.01.1999 of the appellant to the jurisdictional Superintendent, the job work agreement of the appellant with WSIL had been given to the department; and that in view of this the Commissioner (Appeals) order is not sustainable.

4. Shri Sanjay Jain, ld. AR on the contrary has reiterated the finding of the Commissioner (Appeals) in the impugned order.

5. We have considered the rival submissions and perused the records. On perusal of the final order of the Tribunal dated 12.08.2011, it is evident that while remanding the matter back for denovo adjudication the Tribunal specifically directed the Commissioner (Appeals) to decide the issue of limitation after ascertaining whether or not the respondent had informed the department about their job work agreement with WSIL which also included an incentive clause. Though the Commissioner (Appeals) has concluded that the appellant has not made available any evidence that copy of the relevant agreement was submitted with the department, this conclusion appears to be incorrect for the reason that the appellant has today filed on record a letter dated 08.01.1999 addressed to the Superintendent Range Urban-1, Central Excise Division-II, Allahabad wherein there is a clear mention of submitting battery supply agreement dated 25.11.98 between the appellant and Wilkinson Sword India Limited (WSIL). Perusal of this photocopy indicates that there is acknowledgement of receipt of this letter by the Sector Officer on 18.01.1999. If this is correct, then obviously the agreement dated 25.11.98 was submitted to the department, and as such the observation of the Commissioner (Appeals) that the party has not lead any evidence that he has made available copy of agreement cannot be sustained. We may note that the appellant

has also placed on record copy of agreement dated 25.11.98 which does have the incentive clause. Sh. Sanjay Jain, ld. AR submits that authenticity of the letter submitted today by the appellant is to be verified and it is not necessary that original of this letter was actually submitted to the department. This controversy, in our considered opinion, needs to be looked into and adjudicated. Therefore, we set aside the impugned order and remand the matter back to the Commissioner (Appeals) with the direction that he shall decide the issue of limitation after verifying whether or not letter dated 8.1.99 was actually submitted with Superintendent Range alongwith the agreement dated 25.11.98 and if the answer is in affirmative, he shall decide the appeal after considering the relevant clause in the agreement. It is further directed that Commissioner (Appeals) shall make a serious endeavour to decide the appeal within six months.

6. Appeal alongwith stay application are disposed of accordingly.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant