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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

Appeal No. : E/2149/2011-EX[DB]

Dated: **03/08/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
TOPWORTH STEELS & POWER PVT. LTD.
BORAI INDUSTRIAL GROWTH CENTRE, DURG. (C.G.)

TOPWORTH STEELS & POWER PVT. LTD. (Appellant)

VS

C.C.E. RAIPUR (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/899/2012-EX[DB]** dated **31/07/2012** 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. RAIPUR
Central Excise Building, Dhamtari Road,
Tikrapara, Raipur 492001.

2. **Advocate(s) / Consultant(s):** SH. ABHISHEK JAJU, ADV., F-78, FF, LAJPAT NAGAR-II, N. DELHI-24

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

<u>COURT NO. I</u>
<u>DATE OF HEARING/DECISION : 31/07/2012.</u>

Excise Appeal No. 2149 of 2011

[Arising out of the Order-in-Appeal No. 18/RPR-II/2011 dated 20/05/2011 passed by The Commissioner (Appeals-II), Customs & Central Excise, 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?	:

M/s Topworth Steels & Power Pvt. Ltd. — Appellant

Versus

CCE, Raipur — Respondent

<u>Appearance</u>

Shri Abhishek Jaju, Advocate – for the Appellant.

Shri A.K. Jain, Authorized Representative (Jt. CDR) – for the Respondent.

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

FINAL Oral Order No. A/899/2012-Ex(BR)

Shri Justice Ajit Bharihoke :-

Vide order dated 28th of May 2012, the appellant was directed to deposit the duty demand alongwith interest within six weeks from the date of order and the matter was listed for compliance report on 16th of July 2012.

2. On 16th of July, 2012 on the request of the appellant time for deposit for amount was extended for 14 days.

3. Despite of indulgence shown by the Tribunal the appellant has not complied with the order, Shri Abhishek Jaju, Advocate now seeks extension on the ground that yesterday the petitioner has filed a petition challenging the order of the Tribunal. We are unable to appreciate this conduct of appellant. From the sequence of the events detailed above it is evident that appellant is indulging dilatory tactics. If at all the appellant was aggrieved of the order of Stay Order dated 28.5.2012 calling upon him to make pre-deposit of cenvat credit demand along with interest he easily could have filed writ petition at an earlier date. Even on 16.7.2012 when the appellant sought extension of time he did not inform the Tribunal that he intended to file writ petition against the order of deposit. The fact that the appellant has filed writ petition four days prior to the date of reporting compliance is indicative of his intention to delay payment of excise duty. Thus taking into account the dilatory tactics adopted by the

appellant we are not inclined to extend the period for pre-deposit particularly when there is no stay order from the Hon'ble High Court. Accordingly, the request for extension of time to deposit is declined. Since the appellant has failed to comply with the condition of Section 35F of the Central Excise Act, 1944 his appeal cannot be heard. The appeal is accordingly rejected.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

PK