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

STAY Application No. : ST/Stay/3194/2011
Appeal No. : ST/1508/2011-CU[DB]

Dated: **20/09/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,

BAL MUKUND & CO.,
G.T.ROAD, NEAR HERA FILLING
STATION, MOGA. (PUNJAB)

BAL MUKUND & CO., (Appellant)

VS

C.C.E. CHANDIGARH (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/579/2012-CU[DB]**, Stay/MISC Order No. **ST/SO/942/2012** and dated **23/08/2012** passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

Assistant Registrar
CUSTOMS Appeal Branch

Copy To,

1. Respondent

C.C.E. CHANDIGARH
C.R. Building, Plot No. 19, Sector 17-C,
Chandigarh 160017

2. Advocate(s) / Consultant(s):

DSK LEGAL, ATTORNEY &
SOLICITORS
21 UGF,ANTARIKSH
BHAWAN,KASTURBA GANDHI
MARG, N DELHI.

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

Assistant Registrar
CUSTOMS Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

ST/Stay No.3194/2012
ST/Appeal No.1508/2012

(Arising out of order in appeal No. 81/CE/Appl/Chd.II/2011 dated 11.7.2011 passed by the Commissioner of Customs & Central Excise, Chandigarh)

Date of Hearing: 23.8.2012

For Approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member Judicial
Hon'ble Mr.Mathew John, Technical Member

1.	Whether Press Reporters may be allowed to see The order for publication as per Rule 27 of the CESTAT(Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) rules, 1982 for publication in any authoritative report or not?	No.
3.	Whether their lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/s Bal Mukund & Co. Appellant

Vs

CCE, Chandigarh Respondent

Appeared for the Appellant: Shri Abhishek Singh Baghel, Advocate
Appeared for the Respondent: Shri Govind Dixit, SDR

Coram: **Hon'ble Mrs. Archana Wadhwa, Member(Judicial)**
Hon'ble Shri Mathew John, Member (Technical)

Final ORDER No. ST/A/579/12-Cus.
Stay order No. ST/S/942/12-Cus.

Per Archana Wadhwa:

After dispensing with the condition of pre-deposit of service tax, we proceed to decide the appeal itself.

2. After hearing both sides, we find that the Commissioner (Appeals) has earlier allowed the appeal and the Revenue was in appeal before the Tribunal. The Tribunal remanded the matter to Commissioner (Appeals) to examine the applicability of Tribunal's decision in the case of R.S. Travel. The Commissioner (Appeals) in remand of the order simply followed the said decision without considering the various clauses of agreement entered into by the appellant and M/s Nestle India Ltd as also factual position on record. It is also seen that M/s Nestle India had entered into contracts with other assessees also whose appeals were allowed by the Commissioner (Appeals). The Appellate Authority has not followed the order in the present without any distinction made out.

3. It is also seen that the appellants though were given opportunity of hearing, but they did not appear before the Commissioner (Appeals). The contention of the learned Advocate is that they did not receive the two notices and on the third occasion, the office of Commissioner (Appeals) intimated the appellant that the matter would be adjourned. Thereafter, no further date was given.

4. In view of the above, we deem it fit to remand the matter to the Commissioner (Appeals) for fresh decision. Needless to say that the appellants would be given an opportunity to put forth their case and the appellate authority shall examine the facts of the case in relation to various clauses of the agreement entered by the appellants with M/s Nestle India Ltd, the decision of the Tribunal in the case of R.S. Travels and any other submission that may be made by the appellant. That is to say we keep all issues open for argument and consideration.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Member (Technical)

(ARCHANA WADHWA)
Member (Judicial)

MPS*