

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

Appeal No. : E/1088/2012-EX[DB]

Dated: 05/07/2012

Assistant Registrar

C.E.S.T.A.T. New Delhi

To,

Bhagwati Electronics And Industries
Proprietor Jignesh R. Shah, C-34,
Sharanam-1 Apt., Opp. Lotus School,
Jodhpur Gam, Satellite, Ahmedabad-
380015

Bhagwati Electronics And Industries

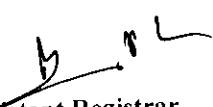
(Appellant)

VS

(Respondent)

C.C.E. & S.T.-Jaipur-ii

I am directed to transmit herewith a certified copy of Final Order No. A/749/2012-EX[DB] , Stay Order No. SO/1020/2012 dated 28/06/2012 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. & S.T.-Jaipur-ii

N C R BUILDING...STATUE

CIRCLE...C-SCHEME... JAIPUR,302005

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

PARESH M.DAVE

43, NEW YORK TOWER "B", 4th

FLOOR, OPP. MUKTI DHAM JAIN

DERASAR, Nr. THALTEJ CROSS

ROAD, AHMEDABAD-380054

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

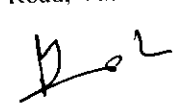
9. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

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 : 28/06/2012.

**Excise Stay Application No. 1348 of 2012 in Appeal No.
1088 of 2012**

[Arising out of the Order-in-Appeal No. 223 (AKJ) CE/JPR-II//2011 dated 09/01/2012 passed by The Commissioner of Central Excise (Appeals), Jaipur – II.]

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

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- | | | |
|----|--|---|
| 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? | : |
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M/s Bhagwati Electronics and Industries	Appellant
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Versus

CCE, Jaipur – II	Respondent
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Appearance

Shri Jitendra Singh, Advocate – for the Appellant.

Shri I. Beg, Authorized Representative (DR) – for the Respondent.

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

STAY Oral Order No. 1020/2012-Ex (BA)
FINAL Oral Order No. A/749/2012-Ex (BA)

Shri Justice Ajit Bharihoke :-

This appeal is directed against the order of the Commissioner (Appeals) dated 9th of January 2012 dismissing the appeal filed by the appellant against the order-in-original on technical ground of non-compliance of Section 35F of the Central Excise Act, 1944.

2. The Commissioner (Appeals) while dealing with the stay application moved by the appellant in the appeal before him directed the appellant to deposit 50% of the penalty imposed upon him as a pre-condition to hearing of the appeal. The appellant failed to comply with said direction which resulted in dismissal of his appeal vide impugned order.

3. Today, the case was fixed for arguments on the stay application moved alongwith the appeal. During the course of arguments on stay application, learned Shri Jitendra Singh, Advocate submitted that his appeal against the order-in-original was dismissed on technical ground of non-compliance of Section 35F of the Central Excise Act and that the appellant is ready and willing to deposit 50% of penalty amount as directed by the Commissioner (Appeals) within four weeks from today. Thus, he requests that in view of the undertaking given by the appellant to deposit the amount, as per the directions of the Commissioner (Appeals), the impugned order-in-appeal may be set aside subject to the compliance of the direction and matter be

remanded back to the Commissioner (Appeals) for deciding the appeal in accordance with law.

4. Learned Shri I. Beg, DR for the Revenue in all fairness have conceded that if the appellant deposits 50% of penalty amount as per directions of the Commissioner (Appeals), the Department has no objection if the impugned order is set aside and the matter is remanded back for decision on merit.

5. In view of the undertaking given by the appellant and the concession given at the bar by learned Shri I. Beg, we accept the appeal subject to the appellant depositing 50% of the penalty amount within four weeks from today and remand the matter back to Commissioner (Appeals) for deciding the appeal on merits. In the event of the appellant failing to deposit the directed amount of the penalty amount within four weeks, this appeal shall be deemed to be dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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