Website : www.cestat.gov.in

Mail : cestat08@gmail.com

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/1344/2012
Appeal No. : E/1086/2012-EX[DB]

Dated: **05/07/2012**

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

Hari Om Industries
Proprietor Ved Prakash Wadhwani, C-24,
Ground Floor, Ashoknagar Socity, Opp-
prenatirth Derasar Satelite, Ahmedabad-
380015

Hari Om Industries (Appellant)

VS

C.C.E. & S.T.-Jaipur-ii (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/750/2012-EX[DB]** & STAY ORDER NO. 1021/2012-EXdated **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. 1344 of 2012 in Appeal No. 1086 of 2012

[Arising out of the Order-in-Appeal No. 227 (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)

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 Hari Om Industries — Appellant

Versus

CCE, Jaipur – II — Respondent

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 1021/2012-Ex(BR)
FINAL Oral Order No. A/750/2012-Ex(BR)

Shri Justice Ajit Bharihoke :-

This appeal is directed against the impugned order of the Commissioner (Appeals) dated 9th of January 2012 vide which he dismissed the appeal against order-in-original due to non-compliance of the order of pre-deposit passed by the Commissioner. We may note that the Commissioner had directed the appellant to deposit entire duty amount of Rs. 26,06,400/- with interest of Rs. 1,52,691/- and 25% of penalty amount. Though, the appellant deposited the amount of duty and interest, as directed, he fail to deposit 25% of penalty amount. On this count, Commissioner (Appeals) dismissed the appeal for non-compliance of Section 35F of the Central Excise Act, 1944.

2. 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 only on technical ground of non-compliance of Section 35F of the Central Excise Act and that the appellant is ready and willing to deposit the 25% 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 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 on merits in accordance with law.

3. Learned Shri I. Beg, DR for the Revenue in all fairness have conceded that if the appellant deposits 25% 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.

4. 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 25% 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 25% of the penalty amount within four weeks, this appeal shall be deemed to be dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

PK