TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
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/1496/2012

Appeal No. : E/1184/2012-EX[DB]

Dated: **23/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
Vinayak Marmo Pvt Ltd
H-287-290, Bedia, Udyog Vihar, Sukher

Vinayak Marmo Pvt Ltd (Appellant)

VS

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

I am directed to transmit herewith a certified copy of Final Order No. **A/836/2012-EX[DB]**, Stay Order No. **SO/1106/2012** dated **17/07/2012** 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. & S.T.-Jaipur-ii
N C R BUILDING...STATUE
CIRCLE...C-SCHEME... JAIPUR,302005

2. **Advocate(s) / Consultant(s):**
Bipin Garg
B-1/1289,A-Vasant Kunj, New 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. Office Copy
13. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Court No.1

Excise Stay application No.1496 of 2012
in Excise Appeal No.1184 of 2012

(Arising out of Order-in-Appeal No.214(CB) CE/JPR-II/2011 dated 12.10.2011 passed by the CCE(A), Jaipur)

Date of Hearing/Decision: 17.07.2012

For approval and signature:
Hon'ble Mr.Justice Ajit Bharihoke, President
Hon'ble Mr.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?	

M/s.Vinayak Marmo Pvt.Ltd. Appellants
Vs.
CCE, Jaipur -II Respondent
Present: Shri Mayank Garg, Advocate for the Appellant
Present Shri Dwinder Singh, JCDR for the respondent

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

STAY ORDER No. 1106/2012-Ex(BR)
FINAL **ORDER No.** A/836/2012-Ex(BR)

Per: Justice Ajit Bharihoke

The appellants are engaged in the manufacture of Marble slab falling under chapter 25 of the First Schedule to the Central Excise Tariff Act ,1985. The appellant was served with the show cause notice dated 11.05.2009 raising a duty demand to the extent of Rs.8,38,430/- The show cause notice also proposed imposition of penalty of equal amount. The show cause notice was adjudicated vide order in original dated 04.03.2011 whereby the jurisdictional authority confirmed duty demand with interest and imposed equal amount of penalty.

2. The appellant preferred an appeal against the order , wherein while deciding the stay application of the appellant, the Commissioner (Appeals) directed the appellant to deposit balance amount of excise duty confirmed i.e. Rs.5,56,049/- within 3 weeks of the date of receipt of order with the observation that in the event of such deposit, the condition of pre-deposit of amount of interest and penalty shall stand waived. The appellant moved application for modification of the stay order which was dismissed. The appellant failed to comply with the stay order which stipulated time, therefore vide impugned order dated 12.10.2011, the Commissioner (Appeals) dismissed the appeal due to non compliance of mandatory requirement of section 35F of Central Excise Act, 1944.

3. Learned Counsel for the appellant submits that due to financial constraints, the appellant could not deposit in time the amount in terms of stay order passed by the Commissioner (Appeals). He has, however, deposited that amount in 2 instalments on 19.03.2012 and 18.04.2012. Since the stay order has been complied with, the appellant is entitled to be heard in appeal.

3. Shri Dwinder Singh, learned JCDR appearing for the department has submitted that the impugned order rejecting appeal was rightly passed as the appellant had not complied with the

requirement of section 35F of Central Excise Act, 1944. He, however, has fairly conceded that since the appellant has now deposited the amount though with some delay, the department has no objection, if the deposit is taken as compliance of requirement of section 35F of Central Excise Act, 1944 and the matter is remanded back to the Commissioner (Appeals) for deciding the appeal on merits after giving due opportunity to both parties.

4. Taking note of the fact that the appellant has now complied with the order of deposit passed by the Commissioner (Appeals) we waive condition of pre-deposit of duty demand, interest and penalty. In view of the overall facts of the case and concession given at the Bar, we are of the view that the appellant is entitled to pursue his appeal on merits. Accordingly, the impugned order is set aside and the matter is remanded back to the Commissioner (Appeals) with the direction to decide the appeal on merits after giving opportunity of being heard to the parties.

5. The appeal as well as stay application are disposed of.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

mk