FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 30/11/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71700/2017-EX[DB] dated 25/07/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/177/2011	CCE, GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302
		Name and Address of Respondent
2		HINDON RIVER MILLS, DASNA GHAZIABAD (U.P.),,

Copy To
3Advocate(s) / Consultant(s):

**V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO
SALES,Above the Office Of
Blue Dart/DHL Courier,
COLVIN ROAD, LOHIA
MARG ALLAHABAD-211001**

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise, I.P. Estate, 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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. E/177/2011-EX[DB]

(Arising out of Order-in-Appeal No. 215-CE/GZB/2010 dated 01/10/2010 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Ghaziabad)

Commissioner of Central Excise, Ghaziabad **Appellant**

Vs.

M/s Hindon River Mills **Respondent**

Appearance:

Shri Gyanendra Kumar Tripathi, Assistant Commissioner (AR), for Appellant

Shri Hrishikesh, Advocate &
Shri Atul Gupta, Advocate, for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision: 25/07/2017

FINAL ORDER NO. 71700/2017

Per: Anil Choudhary

The issue in this appeal by Revenue is, whether the learned Commissioner (Appeals) have been correctly allowed the appeal of the respondent by way of remand, as Section 35A of the Central Excise Act, 1944 was amended with effect from 11/05/2001 and taking notice of the said amendment under the notes to clause 122, which stated that the said clause 122 seeks to amend Section 35A of the of the Central Excise Act, 1944, so as to withdraw the power of Commissioner (Appeals) to 'remand' the matters back to the Adjudicating Authority for fresh consideration. It was so held by the ruling of Hon'ble Supreme Court in the case of MIL India Ltd. *Versus* Commissioner reported at 2007 (210) E.L.T. 188 (S.C.).

2. Heard the learned Counsel appearing for the

respondent-assessee states that Coordinate Bench of this Tribunal in the case of Commissioner of Central Excise *Versus* Honda Seil Power Products Ltd. vide Final Order No. A/1314/2012-EX(BR)(PB), dated 07/11/2012, reported at 2013 (287) E.L.T. 353 (Tri. – Delhi) have distinguished the ruling of the Apex Court in the case of MIL India Ltd. *Versus* Commissioner (supra) and it was held that observations of the Apex Court in the case of MIL India Ltd. *Versus* Commissioner (supra) are in the nature of passing remarks on the scope of powers of Commissioner (Appeals), in appeal under Section 35A(3) of the Central Excise Act, 1944. Therefore, the observations of Supreme Court, in view of the Tribunal, cannot take precedence over the finding of the Apex Court in their precedent decision in the matter of Union of India *Versus* Umesh Dhaimode, which is based on the analysis of the provision itself which was reported at 1998 (98) E.L.T. 584 (S.C.). It was further held, otherwise also Section 35A(3) of the Central Excise Act, 1944 as amended, confers power on the Commissioner (Appeals) to annul the Order-in-Original and also to pass just and proper order. There may be circumstances where only just and proper order could be to remand of the matter for fresh adjudication. For example, if the Order-in-Original is passed without giving an opportunity of being heard to the assessee or without permitting to adduce evidence in support of his case, then only Order-in-Appeal by Commissioner (Appeals) could be to set aside the impugned order on the ground of failure of Justice. This would create an anomaly and cause prejudice to the Revenue as it would bring an end to the litigation without adjudicating on the demand raised by the Show Cause Notice. Therefore, only just and proper order, in such a case, would be to the order of remand, to adjudicate the matter de-novo after giving due hearing to the respondent-assessee. Accordingly, in view of the power to remand the matter back in appropriate cases, is inbuilt in Section 35A(3) of the Central Excise Act, 1944.

3. Having considered the rival contentions and on perusal of the facts on record, we find that the precedent ruling of this Tribunal in the case of Commissioner of Central Excise *Versus* Honda Seil Power Products Ltd. (supra), squarely coveres the issue in the present case. Accordingly, we dismiss the appeal filed by Revenue. We further direct the concerned Adjudicating Authority to pass a reasoned order, after hearing the respondent-assessee within a period of 60 days from the date of receipt of a copy of this order. Further, we also direct the respondent-assessee to appear with a copy of this order before the concerned Adjudicating Authority and seek opportunity of hearing, in accordance with law.

(Dictated and pronounced in Court)

-Sd/-	-Sd/-
(ANIL G. SHAKKARWAR)	(ANIL CHOUDHARY)
Member (TECHNICAL)	Member(JUDICIAL)

प्रमाणित प्रति/Certified True Copy
03/01/18

सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001

Ansari