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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

Dated: 18/12/2015

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

Final Order No. C/A/53676/2015-CU[DB] dated 18/11/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.

Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1 C/CROSS/103/2011	C/552/2010	CCE, INDORE, Manik Bagh Palace, Post Box No. 10, Indore 452001 (M.P.)
		Name and Address of Respondent
2		SYMBLOTECH PHARMALAB LTD., 385/2, PHGDAMBER, RAU, INDORE (M.P.),.

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

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi
6 Director Publications, Customs, Excise, I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad 38
14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order : 18.11.2015

Appeal No. C/552/2010-CU(DB) with C/Cross/103/2011

(Arising out of Order-in-Appeal No. IND/174/2010 dated 23.7.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Indore)

For Approval & Signature :

Hon'ble Mr. R.K. Singh, Member (Technical)
Hon'ble Ms. Sulekha Beevi, C.S., Member (Judicial)

1.	Whether Press Reporter 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?	

CCE, Indore — Appellant

Vs.

M/s Symblotech Pharmalab Ltd. — Respondent

Appearance:

Shri Amresh Jain, D.R. - for the Appellant

Shri M. Saharan, Advocate - for the Respondent

Coram : **Hon'ble Mr. R.K. Singh, Member (Technical)**
Hon'ble Ms. Sulekha Beevi, C.S., Member (Judicial)

F. Order No. 53676/2015

Per **R.K. Singh :**

Revenue is in appeal against order-in-appeal dated 23.7.2010 in terms of which Commissioner (Appeals) remanded the case back to primary adjudicating authority. Revenue contends that with the amendment of Section 129A(3) of the Customs Act, 1962 with effect from 11.5.2001, the Commissioner (Appeals) was divested the power to remand the case.

2. Ld. Advocate for the respondent states that the Supreme Court judgement in the case of ***MIL India Ltd. Vs. CCE*** - 2007 (210) ELT 188 (SC) was taken note of by CESTAT in the case of ***CCE Meerut Vs. Honda Seil Power Porducts Ltd.*** - 2013 (287) ELT 353 (Tri.-Del.) wherein it was held that Commissioner (Appeals) even after the amendment of Section 129A (3) ibid had the power to remand the case.

3. Ld. DR also drew our attention to the judgement of Punjab & Haryana High Court in the case of ***CCE, Jalandhar Vs. B.C. Kataria*** - 2008 (221) ELT 508 (P&H) and ***CC Vs. Enkay (India) Rubber Co. Pvt. Ltd.*** - 2008 (224) ELT 393 to support Revenue's case.

4. We have considered the contentions of both sides. We find that in the case of ***MIL India Ltd.*** (supra), the Supreme Court observed as under.

> "In fact, the power of remand by the Commissioner (Appeals) has been taken away by amending Section 35A with effect from 11.5.2001 under the Finance Bill, 2001. Under the Notes to clause 122 of the said Bill it is stated that clause 122 seeks to amend Section 35A so as to withdraw the powers of the Commissioner (Appeals) to remand matters back to the adjudicating authority for fresh consideration."

The CESTAT in the case of ***Honda Seil Power Products Ltd.*** (supra) took note of the Supreme Court judgement in the case of ***MIL India Ltd.*** (supra) but observed that the Supreme Court only made passing remarks on the scope of power of Commissioner (Appeal) and therefore the same do not constitute binding precedent. While we may not necessarily agree with that observation of CESTAT, we do not need to record a formal difference therewith in the light of the fact that Punjab & Haryana High Court in the cases of ***B.C. Kataria*** (supra) and ***Enkay (India) Rubber Co. Pvt. Ltd.*** (supa) has also held that the Commissioner (Appeals) was divested of power to remand the case back to the adjudicating authority after deletion of that power from Section 35 A(3) of the Central Excise Act, 1944/Section 129A(3) of the Customs Act, 1962.

5. In the light of the foregoing, we agree with the contention of Revenue and allow the appeal by way of remand to Commissioner (Appeals) with the direction to decide the case on merit after following the principles of natural justice.

(R.K. Singh)
Member (Technical)

Sulekha Beevi

(Sulekha Beevi, C.S.)
Member (Judicial)

RM