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REGISTERED / AD

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

Dated: **24/09/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/52906/2015-CU[DB]** dated **17/09/2015**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	ST/316/2011	**VIPPY INDUSTRIES LTD.,** 28, INDUSTRIAL AREA, A.B.ROAD, DEWAS, (M.P.)
		Name and Address of Respondent
2		-C.C.E. INDORE Manik Bagh Palace, Post Box No. 10, Indore 452001 (M.P.)

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

Shri.V.LaxmiKumaran, Advocate
5, Jangpura Extension Link Road,
New Delhi-110 014

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 17.09.2015

For Approval &Signature :

Hon'ble Hon'ble Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Appeal No.ST/316/2011-CU[DB]
[Arising out of Order-in-Appeal No.IND/392/2010, dated 24.11.2010 passed by the C.C.E.&S.T.(Appeals), Indore]

M/s. Vippy Industries Ltd. Appellant

Vs.

C.C.E., Indore Respondent

Appearance
Mr. Vivek Sharma, Advocate - for the appellant
Mr. Ranjan Khanna, DR - for the respondent

CORAM: Hon'ble Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

Final Order No. 52906/2015, dated 17.09.2015

Per Justice G. Raghuram :

The appeal is preferred against the Order-in-Appeal dated 24.11.2010 passed by Shri G.R. Meena, Commissioner (Appeals), Indore. Revenue's appeal filed by the Asst. Commissioner of Customs and Central Excise, Ujjain was allowed by the impugned order to the extent of disallowing refund of service tax incurred by the appellant/assessee on input services used for export of goods. Refund was claimed under Notification No.41/2007-ST, dated 06.10.2007. Refund was granted vide order dated 23.02.2010.

2. The appellant claimed refund of service tax to the extent of Rs.3,68,786/-. The primary adjudicating authority vide order dated 23.02.2010 sanctioned refund to the extent of Rs.3,52,556/- after disallowing refund in respect of certain input services, details of which are not material for the disposal of this appeal.

3. Exercising powers under Section 84(1) of the Finance Act, 1994, C.C.E., Indore passed Review Order No.238, dated 27.04.2010 and directed the primary adjudicating

authority, the Asst. Commissioner of Customs and Central Excise, Ujjain to prefer an appeal against his order dated 23.02.2010. Para-4 of the Review Order clearly records that on an examination of the Order-in-Original, the reviewing Commissioner (Mr. G.R. Meena) finds that the same is neither legal nor proper. Grounds for the conclusion were specified thereunder. Detailed reasons were recorded by Mr. G.R. Meena for his conclusion that the Order-in-Original dated 23.03.2010 was unsustainable to the extent refund was granted on terminal handling charges, by the primary authority.

4. It is primarily alleged in the present appeal and the factual basis of this allegation is conceded by Respondent/ Revenue and is also apparent from the Order-in-Appeal, that the impugned order was passed by the same officer who passed the Review Order dated 27.04.2010.

5. Exercise of appellate jurisdiction by the same officer who passed the review order and had recorded therein a clear conclusion that the primary order was unsustainable is a clear travesty of established principles of natural justice, of that great principle that none should be judge in his own cause

nor, one who has pre-judged on issue should sit in judgement as an appellate authority. The impugned order is in exercise of an appellate power, which requires an independent, unprejudiced exercise of mind, which is not available in the facts and circumstances of the case.

6. For the aforesaid reasons, we allow the appeal and quash the Order-in-Appeal. The appropriate appellate Commissioner may however hear and dispose of the appeal afresh, pursuant to the Review Order dated 27.04.2010, in accordance with law. Since we dispose of this appeal on the point of incompetence of the person who had passed the impugned order, we decline to go into the other questions raised in the appeal regarding merits of the appellant's claim for refund. No costs.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

SSK