FAX : 011-26108426 REGISTERED / AD

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

Dated: **29/04/2015**

To

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

Final Order No. **ST/A/51389/2015-CU[DB]** dated **09/04/2015**

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/294/2009	**PREMIER MOTOR GARAGE** PLOT NO. 47, INDUSTRIAL AREA-I, CHANDIGARH
		Name and Address of Respondent
2		-C.C.E. CHANDIGARH C.R. Building, Plot No. 19, Sector 17-C, Chandigarh 160017

Copy To
3Advocate(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 C.D.R. **15** Office Copy **16** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. I

Date of hearing/decision: 09.04.2015

For Approval and Signature:

Hon'ble Mr. 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 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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?	

Service Tax Appeal No. 294 of 2009

(Arising out of order in original No. 1/STC/CHD/2009 dated 28.01.2009 passed by the Commissioner, Central Excise, Chandigarh).

M/s Premier Motor Garage — Appellant

Vs.

CCE, Chandigarh — Respondent

Appearance:

None for the appellant
Ms. Suchitra Sharma, Commr. (AR(for the Respondent

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

Final Order No. 51389/2015

Per: R. K. Singh:

Appeal has been filed against order in original dated 23.1.2009 ~~15.02.2007~~ passed by the Commissioner, Central Excise, Chandigarh as revisionary authority under Section 84 of the Finance Act, 1994 as it existed during the relevant period.

2. The facts of the case, in brief, are as under:

The Additional Commissioner, Central Excise, Chandigarh vide order-in-original No. 17/JC/CHD/07 dated 15.02.2007 confirmed Service Tax demand of Rs.14,07,448/- alongwith interest but did not impose any penalty under Sections 76, 77 and 78 of the Finance Act, 1994 by extending the benefit of Section 80 of the Act ibid. The assessee filed appeal against the order-in-original before the Commissioner (Appeals) which was dismissed vide order-in-appeal dated 10.08.2007 for default under Section 35F of the Central Excise Act, 1944. The CESTAT vide the final order dated 01.02.2008 set aside the order-in-appeal dated 10.08.2007 and remanded the case to Commissioner (Appeals) who vide order-in-appeal dated 04.04.2008 allowed the assessee's appeal.

3. The Commissioner, Central Excise, Chandigarh on the other hand took up the order-in-original for revision in terms of Section 84 and passed the impugned order dated 23.01.2009 in terms of which he imposed penalties under Sections 76, 77 and 78 ibid. It is seen that the show cause notice for revision which resulted in the impugned order was issued by the Commissioner on 06.02.2008. It is thus evident that on the date of issue of show cause notice for revision of the order-in-original dated 15.02.2007 in terms of Section 84 of the Finance Act, 1994, the

assessee's appeal against the said order-in-original dated 15.02.2007 was very much pending before the Commissioner (Appeals). It is seen that sub-section (4) of Section 84 ibid as it existed during the relevant period, provided as under:-

> *Section 84(4) No order under this Section shall be passed by the Commissioner, Central Excise in respect of any issue if an appeal against such issue is pending before the Commissioner, Central Excise (Appeals).*

4. As stated earlier, on the date of issue of show cause notice for revision, the assessee's appeal against the same order-in-original dated 15.02.2007 was pending before the Commissioner (Appeals) and therefore as per Section 84(4) quoted above, the said order-in-original could not have been taken up for passing the revision order. Further, the Commissioner (Appeals) issued the order-in-appeal on 03.04.2008 and consequently the order-in-original dated 15.02.2007 got merged in the said order-in-appeal dated 03.04.2008 and so on the date of issue of the revisionary order dated 23.01.2009, there was no order-in-original in existence which could be thus revised in terms of Section 84 of the Finance Act, 1994.

5. In the light of the foregoing, it is evident that the order of revision has been issued without jurisdiction. Therefore the order-in-revision dated 23.01.2009 is set aside and appeal allowed.

(Justice G. Raghuram)
President

(R. K. Singh)
Member (Technical)

Pant