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

Appeal No. E/2754/2006 - EX[DB] Date 28/04/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR I — Appellant
Vs
M/S R.S. IND. (R.M.) LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 278/2009- **EX[DB]** dated 23-4-09

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   M/S R.S. IND. (R.M.) LTD.
   A-241-242,ROAD NO. 7, V.K.I. AREA, JAIPUR
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file
18. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:20.4.2009

Central Excise Appeal No.2754 of 2006

Arising out of the order in appeal No.158 (MPM)CE/JPR-I/2006 dated 18.5.2006 by the Commissioner (Appeals) , Central Excise, Jaipur.

For Approval and Signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, 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?	Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellants | Respondent

C.C..E., Jaipur I vs. M/s R.S. Industries (R.M.) Ltd.

Appearance:

Shr A.K. Rastogi, Authorized Departmental Representative (DR) for the Revenue and Shri Hemant Bajaj, Advocate for the respondent

Coram: Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Oral Order No. 278/09-EB

Per Shri Justice R.M.S. Khandeparkar:

Heard the learned DR for the appellant and learned Advocate for the respondent.

2. The points which arise in this appeal is as to whether on remand of a matter by the CESTAT to the Commissioner for de novo decision, can Assistant Commissioner deal with and decide the same and whether mere setting aside of such decision of Assistant Commissioner would result in compliance of remand order.

3. Vide order dated 2nd August, 1999 passed by the CEGAT, the appeal filed by the respondent ~~the~~ assessee was allowed and the matter was remanded to the Commissioner to decide the same afresh after giving the parties an opportunity of being heard and of producing evidence, if any. However, when the matter was remanded, it was taken up for hearing by the Assistant Commissioner, Jaipur and ~~was~~ disposed of vide order dated 29th January, 2004. Since the matter was disposed of by the authority other than to which it was remanded for necessary consideration and that too, without affording opportunity of being heard, the respondent ~~has~~ filed appeal before the Commissioner (Appeals), Jaipur who after hearing the parties allowed the appeal vide its order dated 18th May, 2006.

4. The impugned order was sought to be challenged on the ground that the Commissioner (Appeals), having allowed the appeal filed before him against the order of the Assistant Commissioner, could not have merely set aside the order of the Assistant Commissioner but should have placed the same before the Commissioner to be decided in terms of the order passed by the CEGAT on 2nd August, 1999.

5. Learned Advocate appearing for the respondents fairly admitted that the Commissioner (Appeals) could not have merely allowed the appeal but should have remanded the matter in accordance with order ofthe CEGAT. He also drew our attention to Circular No.762/78/2003-CX, dated 11.11.2003 and particularly to para 2(i) thereof.

6. It is settled law that when the higher authority remands the matter for consideration by the lower authority, with a specific direction that the matter should be heard and decided by an officer of particular level, it is not open to the lower authority to place the matter before any officer other than the one specified in the remand order. The said circular is also very clear in that regard and in para 2(i) thereof it is clearly stated that " For the cases where the appellate authority remand the case with the direction mentioning specifically the level of officer who has to adjudicate the case, then those cases should be adjudicated by the level of officer specified in the appellate in the said appellate order and the revised level of monetary limit of adjudication is not applicable for those cases."

7. Undoubtedly, the said Circular was issued after disposal of the order by the Assistant Commissioner. Nevertheless, the law on the point of that on remand, the jurisdiction or authority to deal with the matter, depends upon scope of the remand order is well settled since long. Once it was clear under the order passed by the CEGAT that the matter was remanded to Commissioner, it was not open for the Assistant Commissioner to deal with the matter. Learned Commissioner (Appeals) was certainly justified in setting aside the order of the said Commissioner as it was passed by the authority other than to whom the matter was remanded by the CE$GAT.

8. It is equally true that the appellants are justified in contending that the Commissioner (Appeals) could not have disposed of the appeal merely by setting aside the order passed by the Assistant Commissioner. Bearing in mind that a direction issued by the CEGAT in order dated 2nd August, 1999, the learned Commissioner ought to have considered that the matter needs to be decided afresh by a competent authority and therefore, merely setting aside the order of the Assistant Commissioner would not be sufficient but having set aside the order, it should have remanded the matter to the Commissioner concerned to decide the same afresh in terms of the direction issued by the CEGAT under

order dated 2nd April 1999. Having failed to do so, it is necessary to issue such direction in this appeal.

9. Hence the appeal succeeds on limited ground as stated above. While confirming the impugned order, it is directed that the mater should be placed before the concerned Commissioner to decide the same afresh in terms of the direction by the CEGAT order dated 2nd August, 1999.

10. The appeal accordingly, stands disposed of.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

scd/