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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/2614/2007-2617/2007 - EX[DB]
E/M/463,464 & 465/2009-EX

Date 13/07/2009

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

To :
M/S BHARTI ELECTRONICS
26/55, MAHABEER BLOCK, GALI NO. 11, PANDAV ROAD, VISHWAS NAGAR, SHAHDARA, DELHI.

M/S BHARTI ELECTRONICS — Appellant

Vs

C.C.E. DELHI II — Respondent

MISC ORDER NO.456-458/2009-EX

I am directed to transmit herewith a certified copy of **Final order No.** 454-456/2009-**EX[DB]** dated 03-7-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   C.C.E. DELHI II
   C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002
2. Adv. / Consult
   MR.PRABHAT KUMAR
   B-51(BASEMENT)SARVODAYA ENCLAVE ,
   NEAR MOTHER INTERNATIONAL SCHOOL NEW DELHI
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
19. M/S SYNOTECH INTERNATIONAL
    2680, CENTRAL MARKET, BHOLANATH NAGAR, SHAHDARA, DELHI.
20. SH. KRISHAN MOHAN GARG, PARTNER
    M/S BHARTI ELECTRONICS, 2680, BHOLANATH NAGAR, SHAHDARA, DELHI.

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: 03.07.2009

Excise Appeal No. 2614, of 2007
[Arising out of order-in-appeal No. 66-70/CE/DLH/2007 dated 07.06.2007 passed by the Commissioner, Central Excise, Delhi-II]

M/s Bharti Electronics — Appellant

Vs.

CCE, Delhi-II — Respondent

AND

Excise Appeal No. 2615 of 2007
[Arising out of order-in-appeal No. 66-70/CE/DLH/2007 dated 07.06.2007 passed by the Commissioner, Central Excise, Delhi-II]

M/s Synotech International — Appellant

Vs.

CCE, Delhi-II — Respondent

AND
Excise Appeal No. 2617 of 2007

[Arising out of order-in-appeal No. 66-70/CE/DLH/2007 dated 07.06.2007 passed by the Commissioner, Central Excise, Delhi-II]

Krishan Mohan Garg, Partner — Appellant

Vs.

CCE, Delhi-II — Respondent

For approval and signature:

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

1.	Whether Press Reporters 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 the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
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?	No

Appearance:

Appeared for the Appellant - Shri Prabhat Kumar with Sh. S.S. Dabas, Advocates
Appeared for the Respondent - Shri V. Chaudhary, SDR

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

Final Oral Order No. 454-456/09-EX

Per Shri Justice R.M.S. Khandeparkar:

On the request of the learned Advocate the appeals are being taken up on board for final disposal.

2. Upon hearing the learned Advocate for the appellant and learned DR for the respondent, it is seen that though the impugned order is sought to be challenged on various grounds, it is not necessary to consider all those grounds and appeals can be disposed of on single ground, namely, failure on the part of the lower appellate authority to consider the fact that in terms of the provisions of law it has no jurisdiction to remand the matter and in case of any illegality in the order passed by the lower authority, then it has to set aside such order and reconsider the matter afresh as if it is the original authority. This is so w.e.f. 11th May 2001 pursuant to the amendment in Section 35A of the Central Excise Act, 1944. Sub-section (3) of Section 35A w.e.f. 11th May 2001 reads thus-

> "The Commissioner (Appeals) shall, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or ann7ulling the decision or order appealed against, provided that an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order; Provided further that where the Commissioner (Appeals) is of the opinion that any duty of excise has not been levied or paid or has been short-levied or short paid or erroneously refunded, no order requiring the appellant to pay any duty not levied or paid, short-levied or short-paid or erroneously refunded shall be passed unless the appellant is given notice within the time-limit specified in Section 11A to show cause against the proposed order".

3. The provision of law comprising of sub-section (3) of Section 35A of the said Act clearly discloses that it is the duty of the Commissioner (Appeals), to pass an appropriate order either confirming, modifying or annulling the decision or order passed by the original authority, but it has no power of remand which was there prior to amendment to Section 35A in the year 2001. Undisputedly, the impugned order was passed in 2007, that is, much after deletion of power of remand to the Commissioner (Appeals). Being so, the impugned order remanding the matter cannot be sustained and is liable to be set aside and the matters need to be sent back to the Commissioner (Appeals) to deal with the same in accordance with the provisions of law under Section 35A (3).

4. It has been informed that pursuant to the direction in the impugned order, the Additional Commissioner has already proceeded with the matter to quantify the duty. Needless to say that once the orders passed by the Commissioner (Appeals) are to be held as without jurisdiction, the same will have no legal impact. Being so, if the Additional Commissioner has proceeded to quantify the duty liability in terms of the impugned order without jurisdiction, the same will have no legal effect, and would not be legally enforceable.

5. In the result, therefore, the appeals succeed on the limited ground. The impugned orders are hereby set aside without expressing any opinion on the merits of the case and the matters are remanded to the Commissioner (Appeals) to dispose of the appeals in accordance with the provisions of law.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

/Pant/

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

COURT-I

Date of hearing/decision: 03.07.2009

E/Misc. Application Nos. 463, 464 & 465 of 2009 in
Excise Appeal Nos. 2614, 2615, 2617 of 2007

M/s Bharti Electronics
M/s Synotech International
Sh. Krishan Mohan Garg

Appellant

Vs.

CCE, Delhi-II

Respondent

Appearance:

Appeared for the Appellant – Shri Prabhat Kumar with Sh. S.S. Dabas, Advocates

Appeared for the Respondent – Shri V. Chaudhary, SDR

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

Misc Oral Order No. 456 to 458/09 – Ex

Per Shri Justice R.M.S. Khandeparkar:

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

2. These are the applications filed against the order passed by the Additional Commissioner quantifying the duty liability pursuant to the direction given by the Commissioner (Appeals) in the remand order passed by him.

3. These applications have been filed in the appeals which have been filed by the appellant against the order passed by the Commissioner (Appeals) on 31.05.2007 whereby while upholding some of the contentions of the appellant has set aside the order passed by the original authority and has remanded the matter for fresh consideration, after making certain observations in relation to the duty liability. Alongwith the appeals, the appellants have filed applications for stay which came to be dismissed by order dated 17.12.2007 holding that in the remand order passed by the Commissioner (Appeals), there was no quantification of the duty liability and therefore the stay petitions were pre-mature. It is pursuant to the quantification of such duty liability by the Additional Commissioner that the present applications have been filed for stay of the demand of duty under the said order.

4. It is the contention on behalf of the appellants that since the orders quantifying the duty liability have been passed by the Additional Commissioner pursuant to the direction issued by the Commissioner (Appeals) in the impugned order, the orders passed by the Additional Commissioner are in the nature of continuation of the order passed by the Commissioner (Appeals) and therefore they form part of the impugned order in this appeal and, therefore, the present applications for stay are maintainable.

5. The impugned order as already observed above has been passed by the Commissioner (Appeals). It is the order passed at the first appellate stage while dealing with the order passed by the original authority. While disposing of the said appeal, the Commissioner (Appeals) had remanded the matter to the original authority. Being so, any order passed by the original authority on account of remand of the matter by the appellate authority can not be, by any stretch of imagination, part of the order passed by the appellate authority. The proceedings

being at two different stages, the order passed at one stage cannot be said to be part and parcel of the order passed at a different stage. There is not only a difference in stages but even there is difference in the nature of jurisdiction of two different authorities. While the order passed by the Additional Commissioner is at the original level of the proceedings and the order by the Commissioner (Appeals) is at the appellate level of the proceedings. Being so, the orders passed by the Additional Commissioner quantifying the duty, pursuant to the direction issued by the appellate authority, cannot form part of the impugned order which is the order by the appellate authority. On this ground alone, the applications will have to be dismissed in liminee.

6. Miscellaneous applications are accordingly dismissed and stand disposed of.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

/Pant/