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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/1146 &1154/2009 - EX[DB] Date 22/07/2009
E/S/1128 & 1138/2009 & E/COD/89 & 90/2009-EX

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR Appellant
Vs
M/S MAHALAXMI STEEL INDUSRIES Respondent

STAY OORDER NO. 723-724/2009-EX
MISC ORDER NO.503-504/2009-EX

I am directed to transmit herewith a certified copy of **Final order No.** 472-473/2009-**EX[DB]** dated 10-7-09

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

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
M/S MAHALAXMI STEEL INDUSRIES ← 19.M/S.MAHALAXMI STRUCTURES(P)LTD,
NEAR JHABAK PETROL PUMP, RING ROAD NO. 2,
GOGAON, RAIPUR (C.G.)
2. Adv. / Consult
MR. H.V. GHIRNIKAR, CON.
C/O RESPONDENT
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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 1146 /2009- Ex(BR)

[Arising out of Order-in-Appeal No. 74/RPR-I/08 dated 14.7.2008 passed by Commissioner (Appeals-I) Customs & Central Excise, Raipur (CG).]

Commissioner of Central Excise
Raipur — Appellant

Vs.

M/s. Mahalaxmi Steel Industries — Respondent

Excise Appeal No. 1154 /2009- Ex(BR)

[Arising out of Order-in-Appeal No. 72/RPR-I/08 dated 9.7.2008 passed by Commissioner (Appeals-I) Customs & Central Excise, Raipur (CG).]

Commissioner of Central Excise
Raipur — Appellant

Vs.

M/s. Mahalaxmi Structures Pvt.Ltd. — Respondent

For approval:
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:

Shri Ishtikhar Baig, DR for the Appellant
Shri H.V. Ghirnikar, Consultant for the Respondent

<u>CORAM</u>:

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

Date of Hearing/decision : 10.7.2009

FINAL **<u>ORAL ORDER NO.</u>** 472/09-EB
FINAL ORAL ORDER NO. 473/09-EB

<u>Per Mr. Justice R.M.S. Khandeparkar</u> (for the Bench):

Since common question of law and facts arise in both these appeals, they were heard together and are being disposed of by this common order.

2. We have heard at length Shri H.V. Ghirnikar, Consultant advocate for and Shri Ishtikhar Baig, learned DR for the Revenue. In appeal No. 1146, the Commissioner (Appeals) while allowing the appeal filed by the respondent herein, has set aside the order passed by the lower authority and remanded the same with this directions:

> "......I hereby set aside the order impugned and remit the case to the lower authority for re-examining the issues afresh. In case the submissions of the appellant are found to be tenable, the re-quantified demand shall be taken into consideration for the purpose of imposition of penalty under section 11AC of the Central Excise Act, 1944 and recovery of the interest thereon."

With the above observations, the Commissioner (Appeals) has remanded the matter for denovo consideration. It is settled law that the Commissioner

(Appeals) has no power to remand the matter pursuant to amendment to provisions of law comprised under section 35A with effect from 11.5.2009. Being so, the Commissioner (Appeals) clearly erred in remanding the matter to the original authority. In view of amendment to section 35A, the Commissioner (Appeals) is empowered to exercise the power of original authority once the order of original authority is set aside by him in appeal. Being so, the impugned order is therefore liable to be set aside on this ground itself and the matter to be remanded to the Commissioner (Appeals) to deal with the matter in accordance with the provisions of law.

3. In Appeal No. E/1154, the Commissioner (Appeals) has set aside the impugned order in relation to imposition of penalty under Rule 25 of the Central Excise Rules, 2002 on the ground that the lower authority should not have imposed the penalty simultaneously under section 11AC of the Central Excise Act as well as under Rule 25 of the said Rules. Indeed the law in that regard is well settled. However, in view of the fact that the matter is still pending before the Commissioner (Appeals), in view of the order passed by us in Appeal No. 1146/09, it will be necessary for the Commissioner (Appeals) to deal with the question as to whether penalty is sustainable either under section 11AC of the said Act or under Rule 25 of the said Rules or whether any penalty in the said facts and circumstances of the case is imposable at all while dealing with the matter in terms of order passed in Appeal No. 1146/09. Being so, the impugned order cannot be sustained and is liable to be set aside and matter is remanded to the Commissioner (Appeals). It is also been informed that pursuant to the order of the remand

passed by the Commissioner (Appeals) in F. No. 80/2008 before the Commissioner (Appeals), the lower authority was also seized with the matter. Needless to say that since the order of the remand dated 14.7.08 by the Commissioner (Appeals) was without jurisdiction, the lower authority will have no jurisdiction to deal with the matter and as such has passed any order pursuant to the order dated 14.7.08, it would be ab initio bad in law. In the circumstances, both the appeals succeed. The impugned order in both the appeals are set aside and the matters are remanded to the Commissioner (Appeals) to decide afresh in accordance with the law and bearing in mind the observations made hereinabove.

4. The appeals are disposed of in the above terms.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member(Technical)

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