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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/1990/2009-1992/2009 - EX[DB] WITH E/S/2055-2057/2009-EX

Date 13/10/2009

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

To :
M/S MOKSH OVERSEAS,
B-98, NARAINA INDUSTRIAL AREA, PHASE-I,
NEW DELHI.

M/S MOKSH OVERSEAS, Appellant

Vs

C.C.E. DELHI I STAY ORDER NO.990-992/2009-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No. 781-783/ 2009 EX[DB]** dated 05-10-09 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 I
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002
2. Adv. / Consult
MR.C.HARISHANKAR
46, BANK ENCLAVE,DELHI-110092
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. SH MANOJ GARG
PARTNER OF M/S MOKSH OVERSEAS, B-98, NARAINA INDUSTRIAL AREA,PHASE-1, N DELHI.
20. SHRI DEEPAK YADAV,
B-98, NARAINA INDUSTRIAL AREA, PHASE-I,
NEW DELHI.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 1990 of 2009

(Arising out of Order-in-Original No. 11/2009 dated 30.03.2009 passed by the Commissioner (Appeals) Central Excise, Delhi-I).

DATE OF HEARING : 05.10.2009
DATE OF DECISION : 05.10.2009

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT
HON'BLE MR. RAKESH KUMAR, 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 ?	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?	Ye

M/s Moksh Overseas .... **Applicant**
(Rep by Sh. C. Harishankar with Sh. S. Sunil, Advts.)

VERSUS

CCE, Delhi .... **Respondent**
(Rep. by Sh. B.L. Soni, DR)

AND

(ii) **Excise Appeal No. 1991 of 2009**

Mr. Deepak Yadav .... **Applicant**
(Rep by Sh. C. Harishankar with Sh. S. Sunil, Advts.)

VERSUS

CCE, Delhi .... **Respondent**
(Rep. by Sh. B.L. Soni, DR)

AND

(iii) **Excise Appeal No. 1992 of 2009**

Mr. Manoj Garg .... **Applicant**
(Rep by Sh. C. Harishankar with Sh. S. Sunil, Advts.)

VERSUS

CCE, Delhi .... **Respondent**
(Rep. by Sh. B.L. Soni, DR)

CORAM : **HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT**
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

FINAL **ORAL ORDER NO.** 781 – 783 / 09 – EX

PER JUSTICE R.M.S. KHANDEPARKAR :

All these appeals are taken up for hearing in terms of the order passed in Stay Application Nos. 2055 to 2057 of 2009.

2. Heard.

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

4. Though the impugned order is sought to be challenged on various grounds, it is not necessary to address to all those grounds and suffice to refer to only one ground, namely, failure on the part of the adjudicating authority to comply with the basic principles of natural justice while deciding the matter.

5. In the case in hand, by order dated 21st January, 2009 passed in Appeal Nos. E/1283, 1284 & 1285 of 2009, the Tribunal had set aside the

order passed by the adjudicating authority and had remanded the matter for de novo adjudication with the following observations and directions :

> **"4. Since on account of denial of natural justice, the impugned order is not sustainable, the same is set aside and the matter is remanded to the Commissioner for de-novo adjudication after supplying the following documents to the appellant and granting personal hearing :**
>
> **(a) The letters dated 7.10.2005 and 9.12.05 of the Asstt. Commissioner, Central Excise, Division-V, Surat.**
>
> **(b) The letters issued by the manufacturers denying selling of any material to the appellant.**
>
> **5. In view of the huge amount of revenue involved, we direct the Commissioner to supply the documents by 15th Feb., 2009. The appellants shall submit their reply by 28th Feb., 2009 and thereafter the Commissioner must adjudicate the matter by 31st March, 2009. The stay applications as well as the appeals stand disposed off as above."**

6. The adjudicating authority by the impugned order dated 30th March, 2009 disposed of the proceedings by holding that the appellants had wrongly availed the Cenvat Credit to the tune of Rs. 1,65,24,493/- and, therefore, demanded the same along with imposition of penalty and also demand for interest.

7. The learned advocate for the appellants while drawing our attention to the order passed by the Tribunal earlier while remanding the matter and to para 19 of the impugned order, submitted that, in spite of specific request by the appellants to allow the appellants to cross-examine the proprietor of the supplying units in respect of the letters on the basis of which the demand has been confirmed against the appellants, the adjudicating authority refused to grant such request solely on the ground that

the order passed by the Tribunal did not give such a direction to the Commissioner. Indeed the observations in the impugned order in that regards read thus :

> **"Further, the appellant have insisted upon cross-examination of the suppliers and that of the Central Excise Officers of Surat, I am unable to even consider acceding to the request for cross-examination of suppliers since the Hon'ble CESTAT has not directed in para 4 and 5 of the final order. In this regard, it is a settled position in the law that being lower adjudicating authority the decision of the Tribunal is binding on the Commissioner and reliance in this regard is placed on the judgment of the Hon'ble Supreme Court as held in the case of Paper Products Limited vs Commissioner, C.E., Mumbai 2007 (214) E.L.T. 161 (SC) wherein it has been held that the remand order was only related to a particular plea and no other plea can be covered as has been highlighted by the Court in para 9 of *Mohan Lal vs Anandibai and Ors.* [AIR 1971 SC 2177]........."**

8. Confirmation of awareness about the obligation of the lower authorities to comply with the decision of the Tribunal is certainly appreciable. But it is also to be noted that the decision has to be enforced in terms of the directions issued therein and not in terms of the inferences sought to be drawn from the order passed by the Tribunal. The order of the Tribunal clearly states that the adjudicating authority has to conduct de novo adjudication proceedings. Obviously, it includes rights of the parties to cross-examine each and every witness or the author(s) of the private documents sought to be relied upon by the opposite party. Once the Tribunal has clearly observed that, the letters issued by the suppliers were very relevant documents and the copies thereof should be furnished to the assessee and the assessee thereupon had requested for cross-examination of the author(s) of such letters, it was obligatory for the adjudicating authority to

allow such request as it was within the relm of principles of natural justice which was required to be complied with by the adjudicating authority in order to enable such authority to rely upon such documents to arrive at a final decision based on such documents. It is not in dispute that the impugned order clearly discloses reliance upon such documents to fix the duty liability upon the appellants. Once it is made clear that those documents, which are essentially private documents, were relied upon to fix the duty liability upon the assessee, without giving opportunity to the assessee to cross-examine the author(s) of such documents, it goes to show that the authority has failed to comply with the basic principles of natural justice while deciding the matter.

9. As observed by the Commissioner himself, the decision of the Apex Court is on the point that when the remand order is related to a particular plea, certainly the scope of the inquiry before the lower authority cannot extend to other pleas. That is not the case in the matter in hand when it was specifically observed that the authority has to conduct de novo adjudication proceedings.

10. For the reasons stated above, therefore, the impugned order cannot be sustained and is liable to be set aside.

11. It was sought to be contended on behalf of the respondent that the appellants have not been able to produce the original documents regarding the availment of Cenvat Credit in spite of specific directions in that regard. That itself will not be a ground to deny fair opportunity to the assessee to meet the case of the Department. To what extent the failure on the part of the assessee in this respect would help the adjudicating authority to draw adverse inference will depend upon various other factors but it is too

pre-mature for us to deal with this aspect at this stage. The issue in that regard is kept open to be decided by the adjudicating authority.

12. For the reasons stated above, therefore, and on the limited ground, as stated above, the impugned order cannot be sustained and is liable to be set aside and the matter remanded with a direction that the appellants should be allowed to cross-examine the author(s) of the documents of the letters which are sought to be relied upon pursuant to the order passed earlier by the Tribunal. With this direction, the matter is remanded for the said purpose and for fresh decision by the adjudicating authority after affording reasonable opportunity of being heard to the parties in accordance with the provisions of law. We make it clear that we have not expressed any opinion on the merits of the case.

13. Appeals accordingly stand disposed of in the above terms.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

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