TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. C/77 /2006 - CU[DB] Date 14/10/2008

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

To :
COMMISSIONER, CUSTOMS & CENTRAL EXCISE
COMMISSIONER, CUSTOMS & CENTRAL EXCISE,
P.B.NO. 10, MANIK BAGH PALACE, INDORE-452001

COMMISSIONER, CUSTOMS & CENTRAL EXCISE Appellant

Vs

M/S HINDUSTAN MOTORS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/384/2008 CU[DB] dated 06.10.08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent M/S HINDUSTAN MOTORS LTD.,
   PITHAMPUR SECTOR-III, SAGORE,
   DISTT. DHAR (M.P)

2. Adv. / Consult MR. T.K. RAMASUBRANAYAM, CONSLT.
   C/O M/S HINDUSTAN MOTORS LTD.,
   PITHAMPUR SECTOR-III, SAGORE,
   DISTT. DHAR (M.P)

3 S.D.R
4 J.C.D.R.
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 Office Copy
16 Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

C/77/06

[Arising out of Order-in-Appeal No.IND-1/342/05 dt.21.10.05 passed by the Commissioner(Appeals), Indore)

For approval and signature:
Hon'ble Mr. S.S.Kang, Vice 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?	:	
2.	Whether it would be released under Rule 27 of the 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 Department Authorities:	:	

CCE, Indore — Appellant

Versus

M/s. Hindustan Motors Ltd. — Respondent

Appearance

Shri V.Kumar, Authorised Departmental Representative(DR) For appellant
S/Sh. T.K.Ramasubramanyan and K.K.Choudhary, Consultants for respondent

Coram: Hon'ble Mr. S.S.Kang, Vice President
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Final

Date of decision: 6.10.08
Order No. C/384/08

Per S.S.Kang:

Heard both sides. The revenue filed this appeal against the impugned order passed by the Commissioner(Appeals) whereby Commissioner(Appeals) set aside the adjudication order and remand the matter back to the adjudicating authority for reconsideration. The contention of the revenue is that the power of remand by the Commissioner(Appeals) has been taken away by amending Section 35A(3) of Central Excise Act w.e.f. 11.5.01 under the Finance Bill,2001. The contention is that after 11.5.01, Commissioner(Appeals) has no power to remand the matter to the adjudicating authority, therefore, the impugned order is not sustainable.

2. We find that the Section 128A has been amended w.e.f. 11.5.01. This issue came before the Hon'ble Punjab & Haryana High Court in the case of CCE, Jalandhar vs B.C.Kataria reported in 2008(221)ELT.508. Hon'ble High Court after considering the decision of the Hon'ble High Court of Gujarat in the case of CCE vs Medico Labs. reported in 2004(173)ELT.117 held that after the amendment of Section 128A of Customs Act, the Commissioner has no power to remand further. We find that Hon'ble Supreme Court in the case of MIL India Ltd. vs CCE reported in 2007(210)ELT.188 also notice this fact that w.e.f. 11.5.01 under Finance Act,2001, the power to remand by Commissioner(Appeals) has been withdrawn. In view of the above decision of the Hon'ble Supreme Court and Hon'ble High Court of Punjab & Haryana, we find

merit in the contention of the revenue . The impugned order is set aside and the matter is remanded to Commissioner(Appeals) to decide the appeal on merit after affording an opportunity to the present respondent. The appeal is disposed of by way of remand.

Order dictated in the open Court.

(S.S.Kang)
Vice President

(Rakesh Kumar)
Member Technical

km