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/559 /2005 Date 24/07/2008

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

To :
THE COMMISSIONER CUSTOMS
P.B.NO.10, MANIK BAGH PALACE, INDORE (M.P.)

THE COMMISSIONER CUSTOMS & CENTRAL EXCISE, INDORE — Appellant

Vs

SHRI V S SAMVATSAR — Respondent

I am directed to transmit herewith a certified copy of Final order No. C/237/08-CUS. DATED 14.07.08

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 SHRI V S SAMVATSAR
THE RECEIVER, SIKHA MOHALLA.
15 JUSTICE SAMVATSAR MARG, INDORE

2. Adv. / Consult

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 Delhi -
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 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Customs Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**
**Principal Bench, New Delhi**

**COURT NO. II**
**Customs Appeal No. 559 of 2005**

[Arising out of the Order-in-Appeal No. 09-CE/IND/APPL-II/ 2005 dated 27/01/2005 passed by The Commissioner (Appeals-II), Customs & Central Excise, Indore. ]

For Approval and signature :
**Hon'ble Shri S.S. Kang, Vice President**
**Hon'ble Shri 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

Shri V. S. Samvatsar — Respondent

**Appearance**

Shri Amit Jain, Authorized Representative (DR) – for the appellant.

None – for the Respondent.

CORAM:**Hon'ble Shri S.S. Kang, Vice President**
**Hon'ble Sh. Rakesh Kumar, Member (Technical)**

**DATE OF HEARING : 14/07/2008.**

Final Order No. C/232/08 Dated : 14/7/08

**Per. S.S. Kang :-**

Heard learned SDR, as none appeared on behalf of the respondent. Revenue filed this appeal against the following observation made by the Commissioner (Appeals).

> " In any case I ~~filed~~ find that in the case the original Appellant has vacated the title of the goods and as per provisions of the DRT, the same now rests with the DRT, also have found committed, where as officer of the Bank of class I (Gr. 'A' category) has been made member to dispose of the property. I also find that the Supreme Court in the case of Allahabad Bank vs. Canara Bank reported in AIR 2000 SC 1535 has held that "In respect of monies realized under the RBD Act the question of priorities among the Banks and Financial Institutions and other creditors can be decided only by the Tribunal under the RBD Act in accordance with Section 19 (19) read with Section 529-A of the companies Act and in other manner".

Therefore, on realization sales proceeds are to be distributed in accordance with the provision of DRT Section 29A of the company Act 1986, which in any case lays down the first payment is to be made to the secured creditors and the workman towards their dues. Therefore in any case the right of the Banks to realize their dues are first charge is not affected by the recovery under the customs Act."

2. The revenue relied upon the decision of Hon'ble Supreme Court in the case of **National Aluminium Co. Ltd. vs. State of A.P.** reported in **2008 (224) E.L.T. 7 (S.C.).** The Hon'ble Supreme Court held as under :-

> "7. It is clear that the scope of consideration before the Tribunal was very limited as to whether any sale took place within the State of Andhra Pradesh. Having decided that issue, Tribunal was not required to go into any other question particularly when the relevant factors were not before it. As rightly contended by the appellants there was no material whatsoever to show that the sales could be treated as intra-state sale within the State of Orissa. The assessing authorities proceeded to levy tax on erroneous premises. In the ultimate analysis the Tribunal held that the sales did not take place within the State of Andhra Pradesh. The

conclusions to the effect that they are intra-state sales in Orissa are unsustainable. It was rightly decided that there was no intra-state sale within Andhra Pradesh. But for further conclusion that there was an intra-state sale within the State of Orissa, materials were required to be examined. That has not been done. There was no material before the Tribunal to come to a definite finding, as done, that the transaction should be treated as intra-state sale within the State of Orissa. The observations, therefore, have no relevance and need to be set aside, which we direct."

3. We find that the Commissioner (Appeals) in the impugned order upheld the order passed by the Adjudicating Authority, He, however, make observations regarding appropriation of the sale proceeds of the assets which are not subject matter of the proceedings. The Hon'ble Supreme Court in the case relied upon by the revenue held that the Tribunal was not required to go into any other question particularly when the relevant factors were not before the Tribunal. In these circumstances, we find that the observations made by the Commissioner (Appeals), which is under challenge, are unwarranted, therefore, we modify the impugned order to that extend only and the observation under

challenge are to be considered as deleted. The appeal is disposed of, as indicated above.

(Dictated and pronounced in open court)

**(S.S. Kang)**
**Vice President**

**(Rakesh Kumar)**
**Member (Technical)**

PK