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

Appeal No. ST/202 /2007-SM[BR]   Date 28/01/2008

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

To :
C.C.E BHOPAL
HOSHANGABAD ROAD, 48, ADMINISTRATIVE
AREA, AREA HILLS, BHOPAL (M.P.) 462011

C.C.E BHOPAL   Appellant
Vs
M/S DIVISIONAL MANAGER, M.P.R.V.V.N.LTD.   Respondent

I am directed to transmit herewith a certified copy of Final order No. 178/2008-SM[BR] dated 13.12.2007 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S DIVISIONAL MANAGER, M.P.R.V.V.N.LTD.
   KUNDAM PROJECT DIVISION, JABALPUR (M.P.)
2. Adv. / Consult SHRI. ATUL GUPTA C.S.
   B-1/1289-A, VASANT KUNJ NEW DELHI-70

3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

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

Service Tax Appeal No.202 of 2007-SM

(Arising out of Order-in-Appeal No.95-ST/BPL/06 dt.19.12.06 passed by the Commissioner(Appeals), Bhopal)

For approval and signature:

Hon'ble Mr. P.K.DAS, MEMBER JUDICIAL

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:	:

NO.

CCE, Bhopal — Appellant

Versus

M/s. Divisional Manager,
M.P.R.V.V.N.Ltd, — Respondent

Appearance

Ms. Archna Pandey Mittal, Authorised Representative(Jt.CDR) For Appellant

Shri Atul Gupta, C.S. For Respondent

Coram: Hon'ble Mr.P.K.DAS, MEMBER JUDICIAL

Date of decision: 13.12.07
Final Order No. 178/08-SM(BR)

Per P.K.Das:

The Revenue filed this appeal against the order-in-appeal No.95-ST/BPL/06 dt.19.12.06 whereby Commissioner(Appeals) directed to refund the amount of Rs.1,08,109/- under Section 11B of the Central Excise,44 alongwith interest.

2. The relevant facts of the case in brief are that the respondent filed a refund application on excess payment of tax. The adjudicating authority sanctioned the refund claim but it was denied on the ground of unjust enrichment. The respondent filed an appeal before the Commissioner(Appeals). The Commissioner(Appeals), allowed the appeal of the respondent.

3. Ld. DR submits that it is admitted position from the Commissioner(Appeals) order that the respondent did not submit any evidence in support of the unjust enrichment. So, the Commissioner(Appeals) cannot allow the refund claim on the basis of new evidence, which is hit by Rule 5 of Central Excise(Appeals) Rules,2001. She relied upon the decision of the Tribunal in the case of Mandhana Dyeing vs CCE, Thane reported in 2005(180)ELT.255(Tri.-Mumbai).

4. Ld. Counsel on behalf of the respondent submits that it is evident from the impugned order that the Commissioner(Appeals) examined all the documents placed by the respondent. He further submits that Commissioner(Appeals) has no power to remand the matter to the

adjudicating authority and therefore, he has rightly examined the documents and allowed the refund claim.

5. After hearing both the sides and on perusal of the orders, I find force in the submission of the Ld. DR, It is seen that the Commissioner(Appeals) observed that the appellant had not submitted the documentary evidence before the adjudicating authority. Rule 5 of Central Excise(Appeals) Rules,2001 provides production of additional evidence before Commissioner(Appeals). Sub Rule 2(2) of Rule 5 of the said Rules provides, no evidence shall be admitted under sub-rule (1) unless the Commissioner(Appeals) records in writing the reasons for its admission. In the present case, the Commissioner(Appeals) did not record any finding for admission of the new evidences. Therefore, the impugned order is not sustainable. However, the respondent placed the evidences before the Commissioner(Appeals) which are required to be examined by the adjudicating authority. Accordingly, the matter is remanded back to the adjudicating authority to examine the evidences in connection with unjust enrichment. The appeal is allowed by way of remand.

Order dictated in the open Court.

(P.K.Das)
Member Judicial

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