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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. C/549 /2008 – SM[BR] Date 31/10/2008

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

To :
M/S STAR WIRE (INDIA) LTD.
21/4 MATHURA ROAD,BALLABGARH-121004.

M/S STAR WIRE (INDIA) LTD. Appellant
Vs
C.C. (ICD) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1402 /2008- **SM[BR]** dated 27.10.08 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
   C.C. (ICD) NEW DELHI
   ICD, TUGHLAKABAD, NEW DELHI 110020.
2. Adv. / Consult
   MR.K.L. HANDA
   H.NO. 689, SECTOR 16, FARIDABAD
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-1
15. Office Copy
16. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI, PRINCIPAL BENCH, COURT No.I

Customs Appeal No. 549 of 2008-SM

(Arising out of order in appeal No.CC(A) Cus./ICD.II/141/2008 dated 15.4.2008 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi)

Date of Hearing: 27.10.2008

For approval and signature:

Hon'ble Mr. Justice S. N. Jha, President

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
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?	Yes

M/s Star Wire (India) Limited
Appellant
(Rep. by Shri K.L. Handa, Consultant)

Vs

CC, ICD, TKD, New Delhi
Respondent
(Rep. by Mr. S.K. Bhaskar, DR)

Coram: Hon'ble Mr. Justice S. N. Jha, President

Final ORDER No. 140/08-SM(BR)

Per : Justice S.N. Jha

This appeal by the assessee is directed against the order-in-appeal of Commissioner (Appeals) dated 15.4.2008 setting aside the order of the original authority and remanding the case back to him for fresh adjudication. The submission of the learned representative of the appellant is that after amendment in Section 128A(3) of the Customs Act, the appellate authority has no jurisdiction to remand the case. It was submitted that prior to the amendment, effective from

11.5.2001, there was a specific power to refer the matter back to the adjudicating authority which was taken away by the amendment.

2. Learned Commissioner while passing the remand order referred to the decision of the Tribunal in CCE, Kanpur vs. Garlon Polyfab Ind. Ltd., -2008 (222) ELT 128 (Tri-Del.). The Tribunal relied on the decision of Hon'ble Supreme Court in Union of India vs. Umesh Dhaimode -1998 (98) ELT 584 (SC) wherein considering an identical issue the Supreme Court held that the power of remand is implicit in the power of annulling the order of the lower authority. It was submitted that there is difference of opinion among different High Courts on the point. This submission is totally misconceived. The law declared by the Supreme Court is binding on all courts and authorities in terms of Article 141 of the Constitution of India. In the circumstances, I have no difficulty in rejecting the contention that the remand order is without jurisdiction.

3. Submissions were also made on merit of the case. However, ~~that~~ as the appeal arise from a remand order with a direction for fresh adjudication on merit by the original authority, and therefore I do not wish to go into merit of the case.

4. Appeal is dismissed.

[Dictated and pronounced in the open Court]

[Justice S. N. Jha]
President

[Pant]