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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

Date 19/11/2008

Appeal No. E/1527/2008 – SM[BR] E/ STAY / 1487 / 2008

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

To :
M/S INTECON (INDIA) LTD.
ROOM NO. 1536, WAZIR NAGAR, KOTLA
MUBARAKPUR,NEW DELHI-110003. Appellant
M/S INTECON (INDIA) LTD.
Vs
Respondent
C.C.E. NOIDA

I am directed to transmit herewith a certified copy of **Final order No**. 1476 / 2008- **SM[BR] S/ 6 34 /2008** dated 7.10.08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
C.C.E. NOIDA
B-123, SECTOR 5, NOIDA.
2. Adv. / Consult
MR.PRABHAT KUMAR
B-51(BASEMENT)SARVODAYA ENCLAVE NEAR MOTHER INTERNATIONAL SCHOOL NEW DELHI

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), Thyagarava 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
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Stay 1487/2008, E/Appeal No.1527/2008 -SM(BR)

(Arising out of order in appeal No.55/CE/Noida/2008 dated 31.3.2008 passed by the Commissioner of Central Excise (Appeals), Noida)

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 should 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 Departmental authorities? Yes

M/s Intecon (India) Ltd — Appellant
(Rep. by Shri Prabhat Kumar, Advocate)

Vs

CCE, Noida — Respondent
(Rep. by Shri R.K. Saini, DR)

Coram: Hon'ble Mr P.K. Das, Member(Judicial)

Stay order No. 634/08-SM(BR) Date of Hearing: 7.10.08
Final Order No. 1476 /2008-SM(BR)

Per P.K. Das:

The appeal arises from the remand order of the Tribunal vide Final Order No 1166/2007-SM(BR) dated 6.8.2007. The Tribunal set aside the order of the Commissioner (Appeals) and remanded back the matter to the Commissioner (Appeals) with the direction as under:-

"*The Commissioner (Appeals) did not grant time to the appellant for production of documents. Moreover, he did not verify the record of the adjudicating authority from which the appeal had arisen. It appears that the Commissioner (Appeals) has, without taking into consideration the relevant material on record, dismissed the appeal by a cryptic order, which cannot be said to be a speaking order. While deciding the appeal, the Commissioner has to give findings on the issues raised in the appeal and consider the evidence which was on record before the adjudicating authority. The matter is therefore, required to be remanded for a fresh consideration by the Commissioner (Appeals) in accordance with law, after hearing both the sides. The appeal is accordingly allowed by way of remand. It is expected that Commissioner (Appeals) will expeditiously hear and decide the appeal.*"

2. It is seen from the remand order of the Tribunal that the Commissioner (Appeals) was directed to verify the record of Adjudicating Authority from which the appeal had arisen. The learned DR placed a copy of the letter dated 3.10.2008 written by the Commissioner (Appeals) addressed to the learned DR wherein it is stated that both the parties could not produce the requisite documents, the admissibility of the documents could not be verified and accordingly order in appeal was issued by the then Commissioner (Appeals). I find that there is a specific direction to verify the record of the adjudicating authority which was not placed before the Commissioner (Appeals),-. So, it is required that Commissioner (Appeals) would go through the records of the adjudicating authority to pass order thereon.

3. In view of that, the impugned order is set aside and the matter is remanded back to the Commissioner (Appeals) to verify the record of

adjudicating authority from which the appeal has arisen as directed by the Tribunal in earlier order dated 6.8.2007.

4. I direct that the Commissioner (Appeals) shall pass the order after verifying the record of the adjudicating authority. The appellant is also at liberty to produce the documents. The appeal is allowed by way of remand. The stay application is disposed of.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*