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

Appeal No. ST/865 /2008 - CU[DB] Date 02/03/2009

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

To :
M/S SURPAC SOFTWARE PVT. LTD.
SCO NO. 117-118,SECTOR-17 B, CHANDIGARH.

M/S SURPAC SOFTWARE PVT. LTD. Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/91 2009 CU[DB]** dated 16.02.09 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax
along with stay order no S-e/ 73/07

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
   C.C.E. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
   MR.RAKESH K. KHANNA & CO. C.A
   # 207-B, SECTOR 51-A, CHANDIGARH.
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Service Tax Stay No. 2720 of 2008-Cus. & Service Tax Appeal No. 865 of 2008

(Arising out of Order-in-Appeal No. 335/CE/Appeal/CHD/08/2332 dated 30.9.08 passed by the Commissioner (Appeals), Central Excise, Chandigarh)

M/s Surpac Software Pvt. Ltd. — Appellant

Vs.

CCE, Chandigarh — Respondent

Appeared for Appellant : Shri Rakesh Khanna, CA

Appeared for Respondent : Shri Fateh Singh, DR

Date of Hearing: 16.2.2009

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER
HON'BLE MR. RAKESH KUMAR, TECHNICAL MEMBER

Final Order No. ST/91/09 ....dated............
Stay Order No ST/73/09.

Per D.N. Panda:

Ld. Authorised Representative submits that pre-deposit order was passed ex-parte earlier by the learned Commissioner (Appeals). Against such ex-parte order, the Appellants submitted an application to that Authority for modification of the same. He draws our attention to page-67 which is modification application dated 7.8.08 for modification of the stay order. He submits that when such modification application was filed without the appellant being heard on that application, its appeal was dismissed. But the Appellant having fair chance of success on merits of its case, he prays that it should at least be heard following principles of natural justice by the authority who shall do justice to the Appellant.

2. Ld. DR confirms the factual position except saying that the Appellant was heard by the Authority below and never been denied opportunity of hearing.

3. Heard both sides and perused the record.

4. We agree with the Authorised Representative for the Appellant to the extent of the factual aspect that there was pendency of modification application for hearing. We have noted from the appellate order that ld. Authority below has come to the conclusion stating that there was no additional ground for consideration of the modification application. Therefore it was not possible on his part to consider the same. But we differ with his decision and we are of the view that in interest of justice ld. Commissioner should have given an opportunity of hearing on the modification application and should have passed proper order as that deemed fit. Only after a decision on the modification application, he would have proceed for disposal of the appeal. It appears that the Appellant has been dealt to the detriment of justice and there is a flagrant violation of the principles of natural justice. With the above observations, we dispense pre-deposit and dismiss the appeal for the reason that the

appellant's case was not decided on merit by Appellate Authority below, we direct the Appellant to appear before the ld. Appellate Authority who shall hear the matter afresh on the merit as well as on the proposition of law relating to pre-deposit issue fairly. If he is satisfied, he may dispense pre-deposit or order accordingly. So also he may deal with the appeal in accordance with law. The Appellant is directed to appear before ld. Appellate Authority below on **20.3.2009** and submit an application stating that the Appellant is prepared for hearing of the matter. On such application, if the ld. Commissioner is satisfied that he can hear on the same day he may do so, otherwise he shall fix an appropriate date for hearing and do justice to the litigants.

5. In the result, stay application as well as appeal is disposed in the manner indicated above.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM