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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 02/03/2009

Appeal No. C/526 /2008 – SM [BR]

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

To :
M/S PRIME FURNISHING PVT. LTD. (100% EOU) Appellant
2025, JASH MARKET,RING ROAD,SURAT. Vs
M/S PRIME FURNISHING PVT. LTD. (100% EOU) Respondent

C.C. (ICD) NEW DELHI

I am directed to transmit herewith a certified copy of **Final order No.** 204 / 2009 - **SM[BR]** dated 26.2.2009 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.WILLINGDON & ASSOCIATES
   201/202, ALKAPURI ARCADE, B WING OPP- WELCOME HOTEL, R.C.DUTT ROAD, BARODA

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 -
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,Che
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,Ahmedab
15 Office Copy
16 Guard file

Assistant Regi
(SM Appeal Bra

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Custom Appeal No. 526/2008-SM

(Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/ICD/110/08 dated 27.2.2008 passed by the Commissioner of Customs (Appeals), New Delhi)

M/s Prime Furnishing Pvt. Ltd. — Appellant

Vs.

CC, New Delhi — Respondent

Appeared for Appellant : On merit
Appeared for Respondent : Shri R.K. Verma, DR

Date of Hearing: 20.2.2009

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

Final Order No. 20 H/09-SM(BR) dated 26.2.09

Per D.N. Panda:

None present for the Appellant.

2. Ld. DR Shri R.K. Verma submits that against refund order passed by ld. Adjudicating Authority, Revenue was in appeal before ld. Commissioner (Appeals). Ld. Commissioner (Appeals) while considering factual aspect was of the view that the matter was earlier before the Tribunal. The confiscation of the goods was upheld by the Tribunal. There was reduction of redemption fine. So also there was reduction of penalty on Directors. When this was the situation and the proceeding was under Customs Act 1962, learned Adjudicating Authority without looking into the matter, directed refund of deposit Rs.3,80,146/- deposited as excise duty under TR-6 challan No. 5187 dated 9.5.2003. This being contrary of law, the refund was held by the ld. Commissioner (Appeals) to be not

permissible. Therefore, appropriate order was passed by the learned Appellate Authority below.

3. Ld. DR also submits that several opportunities were given to the Appellant, this is also apparent from the appellate order passed by the Authority below. Despite the opportunity, the Appellant has failed to avail the same for which the present order is an outcome. He also submits that the conduct of the appellant is proved for no appearance before the Tribunal, even though the matter was in the Board from October 2008. Today also the Appellant is absent. Accordingly the appeal be dismissed.

4. Heard Revenue and also perused the record.

5. The record itself exhibits that there was a denial of refund which falls squarely under the proviso to Section 128A (3) of the Customs Act, 1962 since the same curtails the right of the appellant to refund. In such a case, a specific notice is required to be served on the appellant showing the reason to deny the refund and calling for show cause. This principle of natural justice is embedded into law. Such notice not being issued, this matter is remitted to the ld. Commissioner (Appeals) to issue a specific notice in compliance to the law aforesaid and deal with the matter in accordance with law.

6. With the aforesaid observation and finding, this matter is remitted back to ld. Commissioner (Appeals) to do justice to the litigant in accordance with law.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

RM