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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. E/1631/2007 – SM [BR] Date 20/03/2009

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

To :
C.C.E. LUCKNOW

7-A, ASHOK MARG, LUCKNOW.

C.C.E. LUCKNOW Appellant

Vs

M/S ALPHA CONTROL INSTRUMENTS (P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 228 / 2009 –SM[BR] dated 17.3.2009

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

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

M/S ALPHA CONTROL INSTRUMENTS (P) LTD.

CHINHAT, LUCKNOW.

2. Adv. / Consul

NONE;--------------

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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI.

Excise Appeal No. 1631 of 2007

[Arising out of order-in-appeal No. 169-CE/LKO/06 dated 26.10.2006 passed by Commissioner (Appeals), Central Excise and Service Tax (Appeals), Lucknow].

Date of Hearing/ Decision : 27.02.2009

CCE, Lucknow   Appellant

Versus

M/s Alpha Control Instruments (P) Ltd.,   Respondent

Appearance for Appellant - Mr. M.M. Singh, DR
Appearance for Respondent – None.

CORAM: Hon'ble Mr. D.N. Panda, Judicial Member

Final Order No. 228/09-SM(BR)

Per D.N. Panda

In this case, the review order was issued on 23.5.2007 and that has been so done much before that was signed by learned Commissioner on 4.6.2007. It is a matter of surprise how an order signed at a subsequent date was issued ante dated. Learned Commissioner Sri S. N. Singh when signed the review order has not dated the same. But the learned Commissioner, Sri Narayan Basu has signed the same on 4.6.2007. This caused anxiety to enquire into the matter and also the manner how a review is done by Authorities.

2. It has been held by Hon'ble Gujarat High Court in the case of CCE&C, Surat-I vs. Shree Ganesh Dying & Printing Works reported in 2008 (89) RLT 549 (Guj.) in para 11 and 14 of the judgement that Tribunal has power to examine whether there is a compliance to statutory mandate of Section 35(2) of the Central Excise Act, 1944. The review order as aforesaid when looked into gives an impression that the same is neither reasoned nor speaking. An empty formality was only followed by the Authorities to seek the appeal remedy for revenue in a casual manner without stating the governing facts dealt by the learned appellate authority how establishes his order neither to be legal nor proper.

3. Learned DR objects and submits that the review was done properly by two authorities.

4. Heard Revenue and perused the record.

5. It may be stated that an order to meet scrutiny should be reasoned and speaking. Pre-requisite of opinion is mandatory in a review order which should flow from the governing facts discussed by reviewing authority in their order. To come to the conclusion that the order is neither legal nor proper, governing facts of the case should have received proper attention of the reviewing authorities. But that has not been done in this case. Therefore, following the ratio laid down by the Hon'ble High Court of Gujarat, it can be said that there is no compliance to section 35B(2) of Central Excise Act, 1944 by the reviewing authorities in this case and the Review Authorities have failed to discharge their duty in the eyes of law, calling Revenue's appeal to be dismissed, not being maintainable. Accordingly Revenue's appeal is dismissed.

6. For the casual approach by the Authorities and their officer it is necessary to send a copy of this order to the learned Chief Commissioner to see that administrative discipline is followed by the reviewing authorities to avoid the mistake that has been done in this case as pointed out in the beginning paragraph and subsequent thereto in this order. Also a copy of this order be sent to the Chairman, Central Board of Excise & Customs for issue of necessary instruction if any, to the reviewing authorities so that undated orders shall not be issued by the signatories to the review order. So also the order should demonstrate the reason why the order appealed is neither legal nor proper. A copy of Instruction if any issued by Central Board of Excise & Customs, may be communicated to the Registry of the Tribunal for future reference.

[Dictated and pronounced in the open Court]

[D.N. Panda]
Judicial Member

[Pant]