TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

**REGISTERED / AD**
**Email : delhi@cestat.gov.in**

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

Appeal C/578 /2006 – CU [DB] WITH C/CO/266/2006 Date 04/05/2009

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

To :
C.C. N.DELHI. NEW CUSTOM HOUSE,
NEAR IGI AIRPORT,N.DELHI
C.C. N.DELHI. Appellant
Vs
M/S TANEJA MINES PVT LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/156/ 2009 CU[DB]** dated 26.03.09 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

**Copy to :**
1. Respondent
   M/S TANEJA MINES PVT LTD., EMPIRE PLAZA,102,EMPIRE ESTATE,
   MEHRAULI GURGAON ROAD,SULTANPUR,N.DELHI.
2. Adv. / Consult R.K. HASIJA, ADV.
   B-6/10, SAFDERJUNG ENCLAVE,
   NEW DELHI – 110 029.
3. S.D.R
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(Customs Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I**

**Customs Appeal No. 578 of 2006 with Cross Objection No. 266/2006**

[Arising out of Review Order No. 03/2006-07 dated 26.9.2006 passed by Commissioner of Customs (I & G), New Delhi]

For approval and signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

---

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

---

Commissioner of Customs New Delhi — Appellant

Vs.

Taneja Mines Pvt. Ltd. — Respondent

**Appearance:** Mr. L.B. Yadav, SDR for the Appellant
Mr. R.K. Hasija, Advocate for the Respondent

**CORAM:** Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing/decision : 26.3.2009

Final **ORAL ORDER NO . C/156/09**

**Per Justice R.M.S. Khandeparkar** (for the Bench):

Heard the learned DR and learned advocate for respondent.

2. This appeal has been filed by the Department against a communication dated 23.2.06 by the Assistant Commissioner, New Delhi addressed to the respondents herein. The said communication reads as under:

> "Sub: Bill of Entry No. 136898 dated 28.09.2005 and submission of PD Bond dated 26.09.2005-reg.
>
> Please refer to your letter dated 28.09.2005 on the above noted subject.
>
> In this connection, you are hereby informed that all the PD Bonds submitted by you have been cancelled as the goods imported by you are classified under chapter heading 75062000."

3. Learned advocate for the respondent has raised a preliminary objection about the maintainability of the appeal on the ground that communication dated 23.2.06 cannot said to be an order which can be subjected to an appeal before the Tribunal, considering the provisions of law comprised under Section 129A of the Customs Act, 1962.

4. Learned DR submitted that the said communication was issued as a result of finalisation of assessment and therefore, it is an order by the adjudicating authority and hence, appealable under section 129A of the said Act. He further submitted that it was issued under the instructions by the

Commissioner and hence, the maintainability of the appeal against the same cannot be disputed.

5. Section 129A of the said Act enumerates four types of orders which could be the subject matter of appeal before this Tribunal under the said Act and they are:

(1) a decision or order passed by the Commissioner of Customs as an adjudicating authority;

(2) an order passed by the Commissioner (Appeals) under section 128A;

(3) an order passed by the Board or the Appellate Commissioner of Customs under section 128 before the appointed day.

(4) an order passed by the Board or the Commissioner of Customs under Section 130, either before or after the appointed day.

In the matter in hand, we are concerned with the first type of order i.e. the one passed by the Commissioner of Customs as an adjudicating authority.

6. As already seen above, the impugned communication ex-facie nowhere discloses any order or decision as such by the Commissioner. To the specific query in that regard, the learned DR stated that there is no order of finalisation of assessment or order which could be said to have been passed preceding communication dated 23.2.2006. There was no satisfactory answer forthcoming from the department nor any copy of order, if any, could be produced for our perusal. In other words, records do not disclose any order or decision revealing any adjudication by the competent authority under the Act.

7. The right to appeal flows from statutory provisions. Unless a statute specifically provides for appeal, no appeal lies against any order under the statute. The appellate review has to be under the relevant statutory provisions. An appellate remedy is always a statutory creation. In the absence thereof, nobody can file an appeal against any order passed under the statute. Even the scope of appellate remedy depends upon the statutory provision in that regard.

8. The law in force in relation to the decisions passed by the adjudicating authorities specifically provides for right to appeal under section 129 of the said Act. However, in the case in hand, neither the communication dated 23.2.2006 nor any other material discloses any order or decision by the competent adjudicating authority which could be subjected to appeal under the said law. Therefore, the respondents are justified in raising preliminary objection regarding non-maintainability of appeal. Mere submission on the part of the Department that the communication dated 23.2.2006 was on instructions by the Commissioner will not be sufficient to transform the said communication into an order which is otherwise required to be passed by the competent authority in order to make it the subject matter of an appeal under the said provision of law.

9. Even assuming that there was an order passed by the competent authority prior to the said communication and based on such order, a show cause notice which was issued, then also no appeal could have been filed against the communication itself. The appeal remedy under Section 129A of

Act is essentially against an order or decision under the said Act and not against mere communication of such order or decision.

10. An order implies authoritative finalisation of a decision or point in issue. The Black's Law Dictionary, Seventh Edition, defines the term "Order" to mean a written direction or command delivered by a Court or a Judge or an order issued by a Government agency after adjudicatory hearing. In short, as the order is a formal expression of the conclusions, arrived at pursuant to the adjudication on a dispute or a point in issue referred to or placed before the authority concerned who is legally empowered to decide such dispute or point. The order, therefore, represents written or oral expression of the opinion formed by such authority as a result of application of mind and thought process undergone in the course of adjudication of the dispute or issue. The communication of such order is a mere intimation of the decision arrived at by the authority and that by itself would not amount to 'an order' within the meaning of such expression under section 129(A) of the said Act.

11. Being so, we are of the considered opinion that the impugned communication cannot be made subject matter of appeal before this Tribunal under section 129A of the said Act.

12. We have also noticed from the records that the respondents have also preferred cross objection allegedly under section 129A(4) of the said Act. However, the learned advocate for the respondent has fairly submitted that

the respondents are not pressing for the said Cross objections and crave leave for withdrawal of the same.

13. The Appeal is accordingly rejected. The Cross Objections are allowed to be withdrawn. Accordingly the appeal and the cross-objections stand disposed of.

(Dictated and Pronounced in the open Court)

( Justice R.M.S. Khandeparkar )
President

( M. Veeraiyan )
Member(Technical)

ss