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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. C/131 /2006-135 /2006 - CU[DB] C/MISC./99-103/2006 Date 13/05/2009

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

To :
COMMISSIONER OF CENTRAL EXCISE,DELHI-III
DELHI-III, UDYOG MINAR, VANIJYA NIKUNJ,
UDYOG VIHAR, PHASE-V, GURGAON (HARYANA).
COMMISSIONER OF CENTRAL EXCISE,DELHI-III Appellant

Vs

M/S OFFICE TEC INDUSTRIES MISC. ORDER NO.C/43/09 Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/179-183/ 2009 CU[DB]** dated 11.05.09

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 OFFICE TEC INDUSTRIES,
1024 P, SECTOR-7 EXTENTION, NEAR VIVEKANAND
ACADEMY, GURGAON, HARYANA

2. Adv. / Consult K.K. Anand, Adv.
A-5(Basement) Lajpat Nagar-III,
New Delhi-110024.

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)
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DISTT. SOLAN, HIMACHAL PRADESH

20. M/S PULSE COPIERS
1, MINI MARKET,
NEAR GURUDWARA,
MOTI BAGH, NEW DELHI

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Custom Misc. Application No. 99-103 of 2006 and Appeal No. 131-135 of 2006

(Arising out of common Order-in-Appeal No. 417-421/GRM/GGN/2005 dated 24.11.05 passed by the Commissioner of Central Excise, Delhi-III, Gurgaon)

CCE, Delhi-III — Appellant

Vs.

M/s Office Tech Industries — Respondent
M/s Pulse Copiers
M/s National Copier Equipment
M/s Pulse Copier
M/s BE Office Automation Products Pvt. Ltd.

Appearance

Appeared for Appellant : Shri L.B. Yadav, DR

Appeared for Respondent: Shri Hemant Bajaj, Advocate

Date of Hearing: 29.4.2009

CORAM: HON'BLE DR. C. SATAPATHY, TECHNICAL MEMBER
HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Final Order No. C/179-183/09 dated............
Misc Order C/43/09

Per D.N. Panda :

All the aforesaid five Appeals were filed by Revenue on 17.2.2006. When those Appeals were heard by Tribunal on 20.11.2008, ld. Counsel Shri Hemant Bajaj appearing for the Respondent raised a preliminary objection that Appeals of Revenue were not supported by opinion of Committee of Commissioners for which Appeal shall not be maintainable. On that day, ld. DR appearing for Revenue had sought time to get instructions from the ld. Commissioner. The matter was adjourned to 12th December 2008. Thereafter such matter is coming to Board. In the meantime, on 9th February 2009, Revenue filed five Misc. Applications in the above cases which were numbered as Misc. Application No. 99 to 103 of 2009. Revenue has made submission in the Application that the Committee of Commissioners in the note sheet annexed to the Applications have decided filing of Appeal before the Tribunal to meet the requirement of law. Therefore Appeals of the Revenue may be heard on merit. In support of his submission, ld. DR appearing for the Revenue pleaded that following the decision of Hon'ble High Court of Karnataka in the case of **CCE Vs. Rohit Pulp Paper Mills** reported in 1998 (101) ELT 5 (SC) and **Union of India Vs. Century Spinning & Mfg. Company Ltd.** reported in 1998 (101) ELT 6 (SC), Revenue Appeals are maintainable.

2. Ld. Advocate Shri Hemant Bajaj appearing for the Respondent submitted that arriving at opinion that the order appelled is neither legal nor proper is pre-requisite of law following the decision of Hon'ble High Court of Gujarat in the case of **CCE Vs. Shree Ganesh Dying & Printing Works** reported in 2008 (89) RLT 549. He is strengthening his arguments citing the decision of the Tribunal in the case of **CCE Vs. Fibre Glass Fabricators & Anr.** reported in 2009 (91) RLT 144 (CESTAT-Kol.). According to the ld.

Counsel when a particular process of law is prescribed to confer right of Appeal on the litigant, failure to follow such procedure renders Appeals not maintainable and calls for dismissal in liminie. He further brings to our notice that when the Appeal was filed by Revenue on 17.2.06 that was not supported by any review order. The note sheet page relied upon by Revenue today no where discloses whether there was any Committee nor also shows whether such Committee has opined on legality and proprietary of the order appealed. In absence of such mandatory requirement in the note sheet, Misc. Applications cannot cure the defects.

3. Heard both the sides and perused the record.

4. We have thoroughly examined copy of the note sheet submitted by Revenue. We could have appreciated case of Revenue had the note sheet demonstrated that a Committee of Commissioner has opined on the pre-requisite of the law. In absence of such opinion, the case of Revenue calls for dismissal following the decision of Hon'ble High Court of Gujarat in the case of **Shree Ganesh Dying & Printing Works** (supra). We have also gone through the decision of the Apex Court in the case of **Rohit Pulp Paper Mills** (supra). We fail to understand that how the note sheet demonstrates the case of the Appellants in absence of opinion by Committee contained therein. Ld. Counsel's submission that his case is squarely covered by the decision of the Tribunal in the case of **Fibre Glass Fabricators & Anr.** (supra) remained unchallenged by Revenue. That decision having followed the Apex

Court's decision in **Rohit Pulp Paper Mills** (supra) and **Shree Ganesh Dying & Printing Works** (supra), we have no alternative than to dismiss Appeals of Revenue in liminie while rejecting the Misc. Applications in all the five cases filed by Revenue today.

5. In the result, all the five Misc. Applications and Appeals of Revenue are dismissed.

(Pronounced in open Court)

(DR. C. SATAPATHY)
TECHNICAL MEMBER

(D.N. PANDA)
JUDICIAL MEMBER

RM