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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. ST/859, 860, 861, 865 / 2010-SM[BR] Date **02/02/2011**

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

To :
C.S.T. DELHI
17-B, I.P. ESTATE, IAEA HOUSE, NEW DELHI.

C.S.T. DELHI Appellant

Vs

M/S RAMNEEK EMTERPRISES, Respondent

I am directed to transmit herewith a certified copy of **Final order No. 88 – 91 / 2011 - SM[BR]** dated 18.1.2011 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
M/S RAMNEEK EMTERPRISES,
E-90, MAIN BAZAR, BEHIND PNB,
SHASTRI NAGAR, DELHI-110052

**[2] M/S AVS INFOTESH PVT. LTD.
15/12, EAST PATEL NAGAR, NEW DELHI**

**[3] M/S AMERICAN RADIO &AUTOMOBIL CO. PVT. LTD.
1680-1683, S.P. MUKERJ MARG DELHI-6.**

**[4] M/S MAHARANI INDUSTRIAL EQUIPM PVT. LTD.
11, GROUND FLOOR STREET NO. 1,NIRANKARI COLONY
NEW DELHI-110009.**

2. Adv. / Consult
SHRI DHARAM TANEJAC.A.
M/S AMERICAN RADIO&AUTOM.
SHRI ASHWANI KUMAR
M/S MAHARANI INDUSTRIAL.
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House, 1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:18.01.11

For approval and signature:

Hon'ble Shri Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?

3. Whether Their Lordships wish to see the fair copy of the Order?

4. Whether Order is to be circulated to the Departmental authorities?

Service Tax Appeal No.859 of 2010-SM (BR)

[Arising out of Order-in-Appeal No.18/ST/DLH/2010 dated 3.3.2010 passed by the Commissioner of Central Excise (Appeals), Delhi-I].

CST, Delhi Appellant

Vs.

M/s.Ramneek Enterprises Respondent

Service Tax Appeal No.860 of 2010 –SM (BR)

[Arising out of Order-in-Appeal No.14/ST/DLH/2010 dated 25.2.2010 passed by the Commissioner of Central Excise (Appeals), New Delhi]

CST, Delhi Appellant

Vs.

M/s. AVS Infotech Pvt. Ltd. Respondent

Service Tax Appeal No.861 of 2010-SM (BR)

[Arising out of Order-in-Appeal No.13/ST/DLH/2010 dated 25.2.2010 passed by the Commissioner of Central Excise (Appeals), New Delhi].

CST, Delhi Appellant

Vs.

M/s. American Radio & Automobile Co. Pvt. Ltd. Respondent

Service Tax Appeal No.865 of 2010-SM (BR)

[Arising out of Order-in-Appeal No.15/ST/DLH/2010 dated 25.02.2010 passed by the Commissioner of Central Excise (Appeals), New Delhi].

CST, Delhi Appellant

Vs.

M/s. Maharani Industrial Equipments (P) Ltd. Respondent

Appearance: Rep. by Shri R.K. Gupta, SDR on behalf of the appellant.
Rep. by Shri Manoj Kumar Jain, Shri Kashmir Singh, C.A., Shri Ashwani Kumar on behalf of the respective parties.

CORAM: **Hon'ble Shri Rakesh Kumar, Member (Judicial)**

Final Order No. 88 - 91 / 2011 SM (Br) /Dated:18.01.2011

Per Rakesh Kumar

In all these cases, the Revenue is in appeal against the order of the Commissioner (Appeals) on the ground that the Commissioner (Appeals) had remanded the matter to the original adjudicating authority, while the Commissioner (Appeals) has no powers of remand and that if the original adjudicating authority had decided the matter against the respondents without granting them the opportunity of personal hearing, the Commissioner (Appeals) should have decided the matter after hearing the Appellants on merits.

2. Heard both sides.

2.1 Shri R.K. Gupta, ld. SDR on behalf of the Revenue pleaded that during the period of dispute, the Commissioner (Appeals) had no power of remand, that the provisions of Section 85 of the Finance Act, 1994 are in pari materia with the provisions of Section 35 A of the Central Excise Act, 1944 and that with regard to Section 35 A of the Central Excise Act, 1944, Hon'ble Supreme Court in the case of MIL India Ltd. reported in 2007 (210) ELT 188 (SC) has held that the Commissioner (Appeals) has no power of remand, that the order of the Hon'ble Supreme Court in the case of MIL India Ltd. (supra) is applicable to the service tax appeals also and in view of this, Commissioner (Appeals)'s orders remanding the matter to the original adjudicating authority are not correct.

3. Shri Manoj Kumar Jain representing M/s. Ramneek Enterprises , Shri Kasmir Singh, C.A., representing M/s. AVS Infotech P. Ltd., and Shri Ashwani Kumar representing M/s. Maharani Industrial Equipments Pvt. Ltd. pleaded that the case against them is that they had not paid the service tax by the due date and on account of delay in payment of Service Tax, not only interest under Section 75 of the Finance Act was chargeable

for the period of delay, penalty was also imposable under Section 76 ibid, that on this basis, besides demanding interest from them, penalty under Section 76 ibid has been imposed, that there were genuine reasons for delay in payment of the service tax during certain months and that in view of this, in term of Section 80 of the Finance Act, 1994, there was no case for imposing penalty, which is highly disproportionate to the quantum of interest, demanded from them, that their matters were decided by the original adjudicating authority without considering the reasons given by them for delay and also without considering their plea that in view of Section 80 of the Finance Act, 1994, the penalty under Section 76 should have been waived and that the Commissioner (Appeals), therefore, has rightly remanded the matters to the original adjudicating authority.

4. I have carefully considered the submissions from both the sides and perused the records.

5. In view of the judgement of the Hon'ble Supreme Court in the case of MIL India Ltd. (supra), the Commissioner (Appeals) can not remand any matter to the original adjudicating authority on any ground and even if the original adjudicating authority had decided the cases against the respondent without hearing them or without considering their pleas, the Commissioner (Appeals) should have heard them on merits and should have decided their appeals after considering their pleas. The impugned orders are, therefore, set aside and the matters are remanded to the

Commissioner (Appeals). The Commissioner (Appeals) is directed to hear the respondents and decide the question of penalty including the applicability of Section 80 after considering their pleas that there were genuine reasons for delay in discharge of monthly service tax liability during certain months.

(Rakesh Kumar)
Member (Technical)

Ckp.