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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/1668/2010 – SM[BR]   Date **17/02/2011**

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

To :
C.C.E. MEERUT II
OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI
ROAD, MEERUT (UP)

C.C.E. MEERUT II   Appellant

Vs

M/S NAINI PAPERS LTD   Respondent

I am directed to transmit herewith a certified copy of **Final order No. 127 / 2011 –SM[BR]** dated 8.2.2011 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 NAINI PAPERS LTD
KASHIPUR (UTTARAKHAND)

2. Adv. / Consult
NONE:-------------------

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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III
Service Tax Appeal No. 1668 of 2010 (SM)

[Arising out of the Order-in-Appeal No. 316/ST/MRT-II/ 2010 dated 31/08/2010 passed by The Commissioner (Appeals), Central Excise, Meerut – II.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, 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?	:
2.	Whether it would 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 Department Authorities?	:

CCE, Meerut – II Appellant

Versus

M/s Naini Papers Ltd. Respondent

Appearance

Shri Anil Khanna, Authorized Representative (SDR) – for the respondent.

None – for the appellant.

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

DATE OF HEARING : 08/02/2011.

Final Order No. 127/2011 SM (Br) Dated : ___________

Per. Rakesh Kumar :-

This is an appeal filed by the Department against order-in-appeal No. 316/ST/MRT-II/ 2010 dated 31/08/2010 passed by CCE (Appeals), Meerut by which he had remanded the matter to the original Adjudicating Authority for fresh adjudication as per the law. The department's appeal is on the ground that the Commissioner (Appeals) in view of the amended provisions of Section 35A (3) of the Central Excise Act, 1944 do not have the powers of remand.

2. Though the notice for hearing had been sent to the respondent well in time, none appeared on their behalf and, therefore, so far as the respondent is concerned, the matter is being decided ex-parte. Heard Shri Anil Khanna, the learned Departmental Representative who citing the judgment of Hon'ble Supreme Court in the case of **MIL India Ltd. vs.**

CCE, Noida reported in **2007 (210) E.L.T. 188 (S.C.)** and also the judgment of Hon'ble Punjab & Haryana High Court in the case of **CCE, Jalandhar vs. B.C. Kataria** reported in **2008 (221) E.L.T. 508 (P&H)** pleaded that after the amendment of Section of 35A (3) of the Central Excise Act, 1944 in the year 2001, the Commissioner (Appeals) does not have the power of remand and in this case, the Commissioner (Appeals)'s order remanding the matter to the original Adjudicating Authority is, therefore, contrary to the provisions of law and is not sustainable.

3. I have carefully considered the submissions of the learned DR. Since the issue as to whether Commissioner (Appeals) can remand the matter to the original Adjudicating Authority stands settled by the above-mentioned judgments of Hon'ble Supreme Court and Hon'ble Punjab & Haryana High Court and it is settled legal position that during the period of dispute, the Commissioner (Appeals) did not have the powers of remand, the impugned order remanding the matter to the original Adjudicating Authority is not correct. The impugned order is set aside and the matter is remanded to the Commissioner (Appeals) with direction to decide the case on

merits ~~on~~ at his level. The Department's appeal is accordingly allowed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK