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

SINGLE MEMBER APPEAL BRANCH

Appeal No. **ST/1435, 1436 , 1438 / 2010 –SM[BR]** Date **25/04/2011**

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 AMINDS GLOBAL SERVICES PVT. LTD., Respondent

I am directed to transmit herewith a certified copy of **Final order No. 211 – 213 / 2011-SM[BR]** dated 31.3.2011 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 AMINDS GLOBAL SERVICES PVT. LTD.,
A-380, DEFENCE COLONY, NEW
DELHI. 110024

[2] **M/S NUCLEUS SOFTWARE EXPORTS LTD.**
33 – 35, TYAGRAJ NAGAR MARKET, NEW DELHI

[3] **M/S OSGAN CONSULTANTS PVT.LTD.**
E-24 [BASEMENT] LAJPAT NAGAR-III, NEW DEL

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

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi -
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:31.03.11
Date of decision:31.03.11

Service Tax Appeal No. 1435 of 2010-SM

[Arising out of Order-in-Appeal No.171/ST/DLH/2010 dated 08.07.2010 passed by the Commissioner of Central Excise (Appeals), New Delhi].

CST, Delhi — Appellant

Vs.

M/s. Aminds Global Services Pvt. Ltd. — Respondent

Service Tax Appeal No. 1436 of 2010-SM

[Arising out of Order-in-Appeal No.180/ST/DLH/2010 dated 08.07.2010 passed by the Commissioner of Central Excise (Appeals), New Delhi].

CST, Delhi — Appellant

Vs.

M/s.Nucleus Software Exports Ltd. — Respondent

Service Tax Appeal No. 1438 of 2010-SM

[Arising out of Order-in-Appeal No.170/ST/DLH/2010 dated 08.07.2010 passed by the Commissioner of Central Excise (Appeals), New Delhi].

CST, Delhi — Appellant

Vs.

M/s.Osgan Consultants Pvt. Ltd. — Respondent

For approval and signature:

Hon'ble Shri Rakesh Kumar, Member (Technical)

---

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?

Appearance: Rep. by Ms. Rimjhim Prasad, DR for the appellant.
Rep. by none for the respondent.

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

Final Order No. 211 - 213 / 2011 SM (BR) /Dated:31.03.2011

<u>Per Rakesh Kumar</u>

These are the appeals filed by the Revenue against the order passed by the Commissioner of Central Excise (Appeals). In these appeals, the notices of hearing had been issued well in time but when these matters were called, none appeared on behalf of the respondents. In view of this, sofaras the respondents are concerned, the matter is being decided ex parte.

2. Heard Mrs. Rimjhim Prasad, ld. Departmental Representative for the respondent. She pleaded that in these cases, the Commissioner

(Appeals) while considering the appeals filed by the respondents against the orders passed by the original adjudicating authority had remanded the matters to the original adjudicating authority, while in terms of the provisions of Section 85 of the Finance Act, 1994, which is in pari materia with Section 35 A of the Central Excise Act, 1944, the Commissioner (Appeals) had no power of remand. She, therefore, pleaded that the Commissioner (Appeals) should himself have decided the matters instead of remanding the same to the original adjudicating authority. She also cites the judgement of Hon'ble Supreme Court in case of **MIL India Ltd. reported in 2007 (210) ELT 188 (SC)** and the Hon'ble Punjab & Haryana High Court in the case of **M/s. B.C. Kataria reported in 2008 (221) ELT 508 (P&H),** wherein in respect of the provisions of Section 35 A(3) of the Central Excise Act, 1944, it has been held that after the amendment w.e.f. 11.05.2001 of the Section 35 A, the Commissioner (Appeals) did not have the power and he cannot remand any matter to the adjudicating authority.

3. I have carefully considered the submissions of the ld. DR for the Department and have gone through the records.

4. In view of the settled legal position on the point of dispute in this case, I hold that the Commissioner (Appeals) did not have the powers of remand and as such, the orders remanding the matter to the original adjudicating authority are not sustainable. The impugned orders are,

therefore, set aside and the matters are remanded to the Commissioner (Appeals) with directions to decide the same at his level, if necessary, by calling for the records from the concerned officers. Revenue's appeals are accordingly allowed.

(Rakesh Kumar)
Member (Technical)

Ckp.