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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/1717/2010 – SM[BR]** Date **07/06/2011**

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 V.K. DHINGRA & CO. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 284 / 2011-SM[BR]** dated 4.5.2011 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 V.K. DHINGRA & CO.
1-E/15, JHANDEWALAN EXT. NEW DELHI.

2. Adv. / Consult SHRI R.L. GARG CA.
M/S RESPONDENT:--------------------

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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. 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. 1717 of 2010 (SM)

[Arising out of the Order-in-Appeal No.119-Appl/S.Tax/Div-I/Delhi-I/2010, dated 02/07/2010 passed by The Commissioner (Appeals), Central Excise & Service Tax, Delhi.]

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?	:

CST, Delhi Appellant

Versus

V.K.Dhingra & Co. Respondent

<u>Appearance</u>

Shri R.L.Garg, CA – for the respondent.

Shri R.K.Gupta, SDR– for the appellant.

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

DATE OF HEARING : 04/05/2011.

Final Order No. 284/2011 SM (BR) Dated : ____________

Per. Rakesh Kumar :-

The limited point of dispute in this case is as to whether the Commissioner(Appeals) has power of remand or not while deciding an appeal. In this appeal of the revenue, the department has pleaded that the Commissioner(Appeals) has no power of remand and hence his order remanding the matter to original adjudicating authority is not correct.

2. Heard both the sides. Shri R.K.Gupta, the Ld. DR assailed the impugned order by reiterating the grounds of appeal and pleaded that in view of the judgement of Hon'ble Supreme Court in the case of MIL India Ltd. reported in 2007(210)/ELT/188(SC) and the judgement of Hon'ble Punjab & Haryana High Court in the case of B.C.Kataria reported in 2008(221)/ELT/508, Commissioner (Appeals) while deciding the appeal do not have any power of remand.

3. Shri R.L.Garg, C.A., the Ld. counsel for respondent, pleaded the remand order is correct as the original adjudicating authority had decided the appeal without granting the opportunity of personal hearing.

4. I have carefully considered the submissions from the Departmental Representative and perused the records.

5. Since in view of the judgement of Hon'ble Supreme Court in the case of MIL India Ltd. and the judgement of Hon'ble Punjab & Haryana High Court (supra), Commissioner (Appeals) does not have power of remand, the order remanding the matter to the original adjudicating authority is not correct. The same is set aside and the matter remanded to the Commissioner(Appeals) for decision of this matter on merits after hearing the respondents. The revenue's appeal is disposed of as above.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

RK-I