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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/1636/2010 – SM[BR]** Date **01/07/2011**

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 MODERN CABLE NETWORKS, Respondent

I am directed to transmit herewith a certified copy of **Final order No. 367 / 2011-SM[BR]** dated 21.6.2011 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 MODERN CABLE NETWORKS,
KASHIPUR, DISTT. U.S. NAGAR
OF (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. 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.

COURT NO. II

Date of Hearing : 21.6.2011

Service Tax Appeal No. 1636 of 2010-SM

[Arising out of the Order-in-Appeal No. 267-ST/MRT-II/2010 dated 27.8.2010 passed by the Commissioner (Appeals), Central Excise, Meerut-II]

Coram:

Hon'ble Mr. Mathew John, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	NO
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

CCE, Meerut-II — Appellant

Vs.

M/s Modern Cable Networks — Respondent

Appearance:

Appeared for Appellant : Shri K.P. Singh, SDR
Appeared for Respondent : None

CORAM: Hon'ble Mr. Mathew John, Member (Technical)

Final Order No. 367/2011 SM (BR) dated............

Per Mathew John:

When the matter was called none appeared for the Respondent. On past three occasions also none appeared for the Respondent. So the file was examined with the help of the ld. DR. for disposal of the Appeal.

2. The Respondent is a cable TV operator. A Show Cause Notice dated 22-10-09 was issued to ~~them~~ it alleging that ~~they~~ it did not pay service tax payable for the financial year 2008-09 as per provisions of law. The Notice was dropped by the adjudicating authority on the ground that no amount is due from the Respondent as on the date of adjudication i.e. 27-01-2010.

3. Aggrieved by the Adjudication order Revenue filed an appeal with The Commissioner(Appeal) stating that the dues for the year 2008-09 were not paid in time and there was delay in payment and hence penalty under section 76 and 78 of the Finance Act 1994 should have been imposed on the Respondent.

4. The Commissioner (Appeal) after hearing the matter, concluded that the adjudicating authority has not given any reason for not imposing any penalty and the matter should be decided afresh by the adjudicating authority. He set aside the order dated 27-01-2010 and remitted the matter for denovo adjudication by the adjudicating authority.

5. Revenue argues that the Commissioner (Appeal) has no power to remand cases back to the adjudicating authority and should have decided the case himself and on this ground Revenue has filed this appeal.

6. While remanding the matter the Commissioner (Appeal) relied on the decision of the Supreme Court in **UOI Vs. Umesh Dhiamode**-1998 (98) ELT 584 SC to observe that he has such power. However this decision is with reference to the law that prevailed prior to enactment of Finance Act 2001 amending relevant provisions of the Customs Act 1962 and Central Excise Act 1944. The Apex Court had occasion to examine the issue after the amendment in the case of **Mil**

India Ltd. Vs. Commissioner — 2007 (210) E.L.T. 188 (S.C.). In para 4 of the order the Court has observed that such power no longer exists. Therefore the impugned order is bad in law.

7. Therefore the impugned order is set aside. The matter is remitted back to the Commissioner (Appeal) for him to decide the Appeal filed by Revenue.

8. The Appeal filed by Revenue is allowed. by Remand.

(Pronounced in open Court)

(Mathew John)
Member (Technical)