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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. **E/592 /2008 – SM[BR]**

Date **25/08/2011**

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

To :
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD

C.C.E ALLAHABAD Appellant
Vs
SH. R.N.AGRAWAL Respondent

I am directed to transmit herewith a certified copy of **Final order No. 501/2011-SM[BR]** dated 11.8.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
SH. R.N.AGRAWAL
43, SHAHAJANPUR
ROAD,SITAPUR.
M/S U.P.STATE SUGAR
CORPORATION LTD.
GONDA, (U.P.)
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 AND SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delli,

Court No.II

Date of hearing & decision : 11. 08. 2011

Ex. Appeal No.E/592/08-SM

(Arising out of O/A No. 171-CE/Alld/2007 dated 29.8.2007 passed by Commr. of Central Excise (Appeals), Allahabad)
For approval and signature:

Hon'ble Mr. D. N. Panda, Member (Judicial)

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 should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether His Lordship wishes to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental Authorities? :

Commr. of Central Excise, Allahabad
...APPELLANT(S)

VERSUS

Shri R. N. Agrawal
RESPONDENT (S)

APPEARANCE

Rep. by Shri Fateh Singh, SDR for the Department
Rep. by none for the Respondent (s)

CORAM:

Hon'ble Mr. D. N. Panda, Member (Judicial)

Final Oral Order No. 501/2011 SM (Br)

Per Mr. D. N. Panda :

The appeal record at page 30 shows that the Revenue has come in appeal against the first appellate order No.171-CE/Alld/2007 dated 29.8.2007. The document on that page is a Review Order by two Commissioners which is not disclosing the date on which they have taken decision forming a Committee, while law requires that the Committee of the Commissioners should decide on maintainability of the appeal disclosing reasons why order appellable is neither legal nor proper. In absence of such requirement fulfilled, Revenue has no locus to seek appeal remedy being handicapped by Review Order which has not seen light of the day since the order on record of review is without any date. Such a casual behavior of Revenue has been seriously looked into by the Hon'ble High Court of Punjab & Haryana and the the Hon'ble Court has expressed anxiety in the case of CCE, Delhi II Vs. B. E. Office Automation Products Pvt. Ltd. reported in 2010 (249) ELT 24 (P & H) . No Court prefers to make Revenue non-suiter. But for the reason of non-maintainability, no Court will be able to maintain an appeal before it. It would be proper to reproduce para 5 of the judgement of Hon'ble High Court in the aforesaid case for convenience of reading :

> "**5.** The Revenue has also pleaded that after the dismissal of the appeal vide order dated 2-2-2009 an order of authorisation has been passed subsequently on 4/6/2-2-2009 which may be considered as *ex post facto* authorisation. Firstly, there is no ground raised in the grounds of appeal which has been filed on 6-7-2009. Moreover, after the dismissal of appeal by the Tribunal the defect could not have been removed. A perusal of the file shows that the Revenue has proceeded on the premises that on 2-2-2009 it has been given time to cure the defect by 9-2-2009 as the next date fixed is 18-2-2009. The aforesaid

premise is factually incorrect as the appeals were dismissed vide order dated 2-2-2009 (A.4). In any case once the fundamental element of formation of opinion of filing the appeal is missing then no appeal is deemed to be instituted in the eyes of law. Ordinarily, we do not non suit the Revenue for a procedural lapse but this case is of such a nature that lapses one after the other have been committed. Therefore, the appeals are wholly without merit and are liable to be dismissed."

2. On the earlier occasion, it was also noticed that the Revenue has lost its appeal repeatedly for the reason aforesaid. Such case that has been reported is CCE, Kanpur Vs. Kurele Chemical Company reported in 2009 (245) ELT 335 (Tri-Del.)

3. For the reason aforesaid, Revenue's appeal is dismissed.

(Dictated and pronounced in the open Court)

(D. N. Panda)
Member (Judicial)

mm