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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/2369/2008 – SM[BR] E / MISC / 243 /2011-SM[BR]** Date **30/08/2011**

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

To :
C.C.E BHOPAL
HOSHANGABAD ROAD, 48, ADMINISTRATIVE
AREA, AREA HILLS, BHOPAL (M.P.) 462011
C.C.E BHOPAL Appellant

Vs

M/S RAMDEO SUGAR PRIVATE LIMITED, Respondent

I am directed to transmit herewith a certified copy of **Final order No. 525 / 2011-SM[BR]** dated 16.8.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S RAMDEO SUGAR PRIVATE LIMITED,
BANKHEDI, PIPARIA
GADARWARA ROAD, DISTRICT
HOSHANGABAD (M.P.)

2. Adv. / Consult SHRI PRABHAT KUMAR ADV.
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066

COURT NO. II

E/Misc./243 of 2011 in and
Central Excise appeal No. 2369 of 2008-SM

[Arising out of Order-in-Appeal No. 157/BPL/2008 dated 18.9.2008 passed by the Commissioner of Customs & Central Excise (Appeals), Bhopal].

Date of Hearing/decision: 16th August, 2011

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member;

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 Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

C&CCE, Bhopal — Appellant

Vs.

M/s. Ramdeo Sugar Private Ltd., — Respondent

Present for the Appellant : Shri Anil Khanna, D.R.
Present for the Respondent : Shri Prabhat Kumar, Advocate

Coram: Hon'ble Shri D.N. Panda, Judicial Member

FINAL ORDER NO. 525/2011 SM (BR) **DATED**

Per D.N. Panda:

Review Order does not disclose whether there was Committee and whether such Committee met to take a decision as required by law. The Review Order is also undated by one of the Commissioner not disclosing whether he has at any point of time participated in the decision making process. Cases after cases of Revenue are coming up with casual approach to law and without disclosing the reason why the order-in-appeal is neither legal nor proper. Such practice of Revenue was also looked into by the Hon'ble High Court of Punjab & Haryana in the case of CCE, Delhi-III vs. M/s. B.E. Office Automation Products Pvt. Ltd., reported in 2010 (249) ELT 24 (P&H). I have been experiencing casual approach of the Revenue in filing appeal without fulfilling mandatory requirement of law as to the reason of decision for filing of appeal by an appropriate order of the Committee of Commissioners. It would be proper to reproduce Para 5 of the judgment of Hon'ble High Court of Punjab & Haryana to appreciate how Revenue is acting:-

"The Revenue has also pleaded that after the dismissal of the appeal vide order dated 2.2.2009 an order of authorization has been passed subsequently on 4/6/2-2-2009 which may be considered as ex post facto authorization. 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. Learned D.R. vehemently opposed the observations above on the ground that the Revenue has good case on Cenvat credit availed by the respondent on structural items. But Tribunal does not prefer to make Revenue remediless and ~~But~~ when an appeal is not maintainable, Tribunal cannot come to rescue of Revenue. Its appeal is liable to be dismissed. Therefore, it is high time for Revenue to guide its officers to form proper Committee and take decision in accordance with law as has been laid down by the Hon'ble High Court of Gujarat in the case of Ganesh Dyeing reported in 2008 (232) ELT 775 (Guj.) and by Hon'ble High Court of Punjab & Haryana in the aforesaid case. Revenue should not file appeals with scanty regard to law. Certainly, Revenue may be in jeopardy if its appeal is dismissed at maintainability

stage. But casual approach in seeking remedy causes peril to Revenue. Learned CDR is requested to send to communicate a copy of this order to the CBEC so that field formations shall be guided in the matter.

3. In view of the above observations although Revenue is not intended to be non-suitor but its approach has made it remediless. The appeal is dismissed. In view of dismissal of appeal, Misc. application filed by the Respondent is also dismissed.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK