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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/1879/2010 - SM **Date 22/09/2011**

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

S.N.DHAWAN & CO Respondent

I am directed to transmit herewith a certified copy of **Final order No. 633 / 2011-SM[BR]** dated 13.9.2011 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
S.N.DHAWAN & CO
C-37, CANNUGHT PLACE, NEW DELHI.

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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram,
NEW DELHI

COURT-II

Service Tax appeal No. 1879/2010-SM

Date of hearing/decision: 13th September, 2011

CST, Delhi — Appellant
Reptd. By Shri B.L. Soni, D.R.

Versus

M/s. S.N. Dhawan & Co., — Respondent
None

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

FINAL ORDER NO. 633 / 2011-SM (BR) **DATED**

Per D.N. Panda:

None present for the respondent. Shri Soni, learned D.R. submits that when the materials are borne by record the first appellate authority failed in his duty to take pain to scrutinize bills/invoices/challans which were sole documents of Cenvat credit. So also he submits that penalty is to be decided after examination. Therefore, Revenue's appeal may be allowed directing the first appellate authority to discharge his co-terminus and coextensive power to reach to a rational conclusion without looking into quantum involved because cause of disallowance is more significant for Revenue then the quantum of disallowance or allowance. A reasoned order is expected from appellate authority.

2. There is no difference to the proposition made by learned D.R. on behalf of Revenue. If a~~n~~ appellate authority hesitates to scrutinize the materials before him on the touch stone of law, the authorities below him may lack guidance. There should be exercise by Appellate Authority to lay down guideline for junior officers. They are vested with power of "Central Excise Officer" as defined by section 2(b) of Central Excise Act, 1944 and they have same power as that of original authority while sitting on appellate side to find truth. The case in hand before first Appellate Authority was not a fit case to direct the original authority to re-examine all material borne by record. Revenue has, therefore, grievance for remand of the matter made by Com(A).

3. In view of the above, it is preferable that learned Appellate Authority shall pass order afresh in this case to resolve the controversy before him stating the reasons for his speaking order, granting fair opportunity of hearing to the respondent.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK