TELEGRAM : CEGCANAL
site : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/91 /2011 – SM[BR] **Date 12/10/2011**

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

To :
M/S AGRAWAL INDOTEX LTD.
CHHEGAON MAKHAN, INDORE KHANDWA ROAD, KHANDWA.

M/S AGRAWAL INDOTEX LTD., Appellant

Vs

C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No. 685 / 2011-SM[BR]** dated 28.9.2011 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
C.C.E. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.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)

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

COURT-II

Service Tax appeal No. 91/2011-SM

Date of hearing/decision: 28th September, 2011

M/s. Agarwal Indotex Ltd., — Appellant
None

Versus

CCE, Indore — Respondent
Reptd. By Shri Fateh Singh, SDR

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

FINAL ORDER NO. 685/2011 SM (Br) **DATED**

Per D.N. PANDA:

None present for the appellant. The Appellate Authority himself has recorded that no proper verification of record has been done by the Adjudicating Authority (Refer page 5 of adjudication order). So also Appellate Authority has recorded that the Adjudicating Authority failed to satisfy himself to take a decision in absence of evidence led by the appellant.

2. When the aforesaid recording is done by the Appellate Authority he could have called the entire record for examination granting fair opportunity to the appellant for rebuttal. No doubt, the doctrine of unjust enrichment shall have role in case of refund but the appellant deserves proper opportunity of rebuttal. To render justice to the appellant the matter is

remanded to the Adjudicating Authority for verification of entire evidence and claim of the appellant granting opportunity of leading evidence, if any, to cross bar of unjust enrichment. If the appellant fails to avail such opportunity, appropriate order shall be passed speaking the reasoned decision taken.

3. In view of the above, setting aside the first appellate order the matter is remanded to the Adjudicating Authority for afresh adjudication of the issue granting reasonable opportunity of hearing to the appellant.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK