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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/3001 – 3002 / 2009 –SM[BR] **Date 18/10/2011**

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 DHAMPUR SUGAR MILLS LTD.(CHEMICAL DIVISION) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 701-702/2011-SM[BR]** dated 14.9.2011
passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
1. **M/S DHAMPUR SUGAR MILLS LTD.(CHEMICAL DIVISION) LTD.**
2. **M/S DHAMPUR SUGAR MILLS LTD.(CHEMICAL DIVISION) LTD.**
DHAMPUR,
DISTT. BIJNORE.

2. Adv. / Consult SHRI AALOK ARORA ADV.
82,MISSION COMPOUND,
SAHARANPUR[U.P]

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.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Excise Appeal No.E/3001-3002/09-SM

[Arising out of Order-in-Appeal No.216-217-CE/MRT-II/2009 dated 31.07.2009 passed by the Commissioner (Appeals), Meerut-II].

CCE, Meerut-II ...Appellant

Vs.

M/s. Dhampur Sugar Mills Ltd. ... Respondent

Present for the Appellant : Shri Anil Khanna, DR
Present for the Respondent:Shri.Aalok Arora,Advocate

Coram: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Date of Hearing/Decision:14.09.2011

Final **ORDER NO.** 701-702/2011 SM (BR) **DATED:**_______

PER: D.N.PANDA

Shri Arora ld. Counsel preliminarily objects that the Annexure to the Review order to be an integral part of the Review was not authenticated by Review authorities. While Review Authorities were different, the signatory to the annexure is also different (who was not one of the Reviewing authorities). It is also pointed out by Shri Arora that when the Reviewing authorities passed an order on 16.11.2009, there was no existence of annexure before them which are named as annexure 1 & 2. Since such annexure could see the light of the day on 18.11.09 as is apparent from page 5 and page 10 of the appeal memo filed by Revenue, that cannot form part of review order.

2. Aforesaid preliminary objection clearly speaks that there was an empty formality followed by the Revenue authorities reviewing the matter leaving the annexure to others those who have no power to be a member of the Committee, but authenticated the annexure 1 &2. Such a pitiable condition of Revenue has made it non suiter due to ~~having~~ scanty regard to law. The casual approach of Revenue has been noticed by Hon'ble P & H in the case of BE Office Automation Products Pvt. Ltd. - 2010 249 ELT 24 (P & H). It will be proper to reproduce para 5 of the said judgement for convenience of reading where Hon'ble High Court has seriously observed that cases of irregularities were repetititive in nature before the Hon'ble Court.

> "**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."

3. In view of the aforesaid noticeable features in this case both the appeals of Revenue are dismissed as not being maintainable.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita