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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

Date 18/03/2010

Appeal No. E/1391/2006 – SM[BR]AND E / ROM / 43 /2009 –SM[BR]

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

To :
M/S CENTURY LAMINATING CO LTD.

VILL ACHHEJA,P, HAPUR,DISTT GHAZIABAD

M/S CENTURY LAMINATING CO LTD. Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 342 / 2010-SM[BR] & M/ 69 /2010 dated 11.2.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

   C.C.E. MEERUT II

   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult

   MR.C.HARISHANKAR

   46, BANK ENCLAVE,DELHI-110092

3 S.D.R
4 ~~J.C.D.R~~.
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise, I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

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

Date of hearing: 11.02.2010
Date of decision: 11.02.2010

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	

Excise RoM Application No. 43 of 2009-SM and
Excise Appeal No. 1391/ 2006-SM (BR)

[Arising out of final order No. 425/09-SM(BR) dated 30.04.2009 passed by CESTAT, New Delhi read with Order-in-Appeal No. 07-CE/MRT-II/2006 dated 19.01.2006 passed by the Commissioner of Central Excise (Appeals), Meerut).

M/s Century Laminating Co. Limited — Appellants

Vs.

CCE, Meerut-II — Respondent

Appearance:

Appeared for the Appellant – Shri C. Harishankar with Sh. P.K. Singh, Advocates
Appeared for the Respondent –Shri S.K. Bhaskar, DR

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President

Final **Order** - 342/2010 SM(BR) &
MISC ORDER NO- 69/2010 SM(BR)

Per: Shri Justice R.M.S. Khandeparkar:

Heard. By the present application, the appellants are seeking to review the order No. 425/09-SM (BR) dated 30.4.2009 passed in Excise Appeal No. 1391 of 2006-SM (BR). It is the contention of the appellants that inspite of clear documentary evidence on record regarding the filing of appeal before the Commissioner (Appeals) on 13.03.2001 against the order dated 23.12.2000 of the adjudicating authority, the Tribunal failed to take note of the same and, therefore, ignoring the said document, disposed of the matter on assumption that no such appeal was filed before the Commissioner (Appeals).

2. Learned Advocate for the appellants drawing my attention to the copy of the memo of appeal which was stated to have been filed before the Commissioner (Appeals) on 13.03.2001 and observations by the Commissioner (Appeals) in his order dated 19.01.2006 that their records do not disclose filing of such appeal, contended that the Tribunal failed to take note of the relevant document, i.e. the copy of the memo of appeal which was filed before the Commissioner (Appeals) and copy of which was also placed on record before the Tribunal and wrongly held that no such appeal was filed by the appellants.

3. Learned DR, on the other hand, drawing my attention to a letter dated 1.8.05 sent by the Superintendent to the appellants submitted that, it was informed to the appellants that the document in question did not satisfy the requirements of the procedure followed by the office rejecting filing of the appeals as the said copy of the document did not bear number of appeal which is otherwise the practice of the office to record such number on such copy immediately upon receipt of the document.

4. Perusal of the order dated 30.4.2009 passed by the Tribunal, apparently, discloses that the contention of the appellants was solely on the basis of the letter dated 29.06.2005 by the Superintendent of Excise, who had informed that the office had not received the appeal. The order, however, did not refer to any material based on which the Superintendent might have given the said information. The said letter on the face of it nowhere discloses any inquiry having been made by the concerned Superintendent before writing the said letter. The letter on the face of it nowhere discloses anything about the procedure that was

followed for filing of the appeal by an assessee before the Commissioner (Appeals) nor that on receipt of such appeal, there was any practice to allot number of appeal, and to record the same on the copy of such appeal returned to the assessee. It is also not mentioned in the letter that there was any such practice at the relevant time in the office of the respondent. Being so, as rightly pointed out by the learned Advocate for the appellants, no much credence could have been given to the said letter to disbelieve the contention of the appellants regarding filing of the appeal. More so, on account of the fact that the department seal appears on the copy of the appeal memo which was produced by the appellant in support of the contention about the filing of the appeal on 13.03.2001. Apart from the seal, it also bears initial and date which reads as 13.03.2001. It is also pertinent to note that there is no finding arrived at by the Commissioner (Appeals) in his order dated 19.01.2006 either to the effect that the seal on the said copy of the appeal did not belong to the office of the respondent or that there was any fraud played by the appellant in obtaining the said seal on the said copy of the appeal. In the absence of such finding, apparently, it would be difficult to disbelieve the statement of the appellant. Though, an affidavit was filed on behalf of the appellant, which clearly stated and that "I had tendered, in the office of learned Commissioner of Central Excise (Appeals) Ghaziabad, an appeal filed on 13.03.2001 against Order-in-Original No. 73/2000 dated 22.12.2000 issued by the Assistant Commissioner of Central Excise, Noida", records nowhere disclose any counter affidavit having been filed on behalf of the Department against the statement made on oath by the appellant. In the background of these facts, the appellants are justified in contending that the finding arrived at in the order dated 13.01.2009 by the Tribunal ignoring the relevant document or failure to take note of the said document, it has definitely resulted in injustice to the party and hence the said order needs to be recalled and the appeal to be restored to the Board.

5. The only point which was sought to be raised in the appeal is regarding the failure on the part of Commissioner (Appeals) to consider the matter on merits and to deny opportunity to the appellants of being heard on the point in issue which was specifically raised in the memo of appeal. Since order dated 19.1.2006 does not disclose consideration of any of those points on merits and the appeal having been dismissed solely on the ground of procedural lapse, for the reasons stated above, the said order cannot be sustained and matter needs to be remanded to the Commissioner (Appeals) to hear the appellants on merits of the case and to decide the said appeal taking into consideration the grounds as revealed from the copy of the order which was furnished to the office of the Commissioner by the appellants on 17th July 2005 alongwith the letter of the said date.

6. For the reasons stated above, therefore, order dated 30th April 2009 is hereby recalled. Appeal No. 1391/06-SM is restored to the Board. Order dated 19.01.2006 being order-in-appeal No. 07/CE/MRT/II/2006 dated 19.01.2006 passed by the Commissioner (Appeals) Meerut-II is hereby set aside and matter is remanded to the Commissioner (Appeals) to dispose of the appeal in accordance with law bearing in mind the observations here in above. The application and the appeal are accordingly disposed of in above terms.

(Justice R.M.S. Khandeparkar)
President

/Pant/