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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 30/03/2010

Appeal No. E/156 - 157 / 2010 -SM[BR] & E / STAY / 146 – 147 / 2010-SM[BR]

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

To :
C.C.E. DELHI II
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002 Appellant
C.C.E. DELHI II Vs
Respondent
M/S KARSHINI IMPEX PVT. LTD.

am directed to transmit herewith a certified copy of **Final order No**.379-380/2010-SM[BR]&S/119-120/2010 dated 12.3.2010

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 KARSHINI IMPEX PVT. LTD.
   PLOT NO. 45, GALI NO. 5, FRIENDS COLONY, SHAHDARA, DELHI-95.
2. Adv. / Consult
   NONE;----------------

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)

18. SHRI SATISH CHAND GUPTA, DIRECTOR, OF
M/S KARSHINI IMPEX PVT. LTD. PLOT NO. 45, GALI NO. 5,
FRIENDS COLONY, SHAHDARA, DELHI-95.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 156 - 157 of 2010-SM(BR) &
Excise Stay Application No. 146-147 of 2010-SM(BR)

[Arising out of Order-in-Appeal No. 244-245/CE/DLH/ 2009 dated 20.11.2009 passed by Commissioner (Appeals), Central Excise, New Delhi]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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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? : Yes
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? : Yes

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C.C.E., Delhi II ... Appellants

Vs.

M/s. Karshini Impex Pvt. Ltd .... Respondent

Appearance:

Shri S.K. Bhaskar, DR for the Appellants
None for the Respondent

Date of Hearing/decision : 12.3.2010

ORAL ORDER NO. 379 - 380/2010 SM Br d
STAY ORDER NO. 119 - 120/2010-SM Br

Per M. Veeraiyan:

These two appeals are by the department against the orders of the Commissioner (Appeals) No. 244-245/CE/DLH/ 2009 dated 20.11.09 by which the Commissioner (Appeals) has set aside the order of the original authority and directed for denovo consideration of the appeal on the ground that the defence reply dated 25.05.2007 was not considered by the original authority.

2. Heard the learned DR.

3. The stay applications, in the facts and circumstances of the case are infructuous and they are disposed of and appeals themselves are taken up for final disposal as short point is involved.

4. The Commissioner (Appeals) has ordered for fresh consideration of the issue by the original authority with the following findings and observations:-

> "4. The first contention of the appellant and appellant No.2 is that their defence reply dated 29.05.2007 has not been taken into consideration while passing the adjudication order. I have gone through the Adjudication Order, the defence replies dated 14.04.2006 & 25.05.2007 were filed before the adjudication authority. On going through these documents I have found that the adjudicating authority have not considered the defence replies dated 25.05.2007 submitted by the appellant and appellant No.2. Therefore, I found that the said adjudication order is against the principle of natural justice. Accordingly, I set aside the same and remit the matter back to the

adjudicating authority for de-novo adjudication. The adjudicating authority will accord the appellants an opportunity of being heard. In view of the above, I do not feel any necessity to go into the merits of the case."

5. The Department, in the grounds of appeal, is not disputing the fact that the original authority has not considered the defence reply dated 25.05.2007. The grounds on which they challenged the order of the Commissioner (Appeals) is that Commissioner (Appeals) has no power to remand and he should have considered the material before him and pass the order. In other words, the department wants the Commissioner (Appeals) to do the function of the original authority as well. It is not forthcoming as to why the original authority did not consider the defence reply. Taking into account the ground taken that the Commissioner (Appeals) has no power to remand, in the facts of the present case, I deem it appropriate to set aside the order of the Commissioner (Appeals) as well as order of the original authority and remand the matter to the original authority for fresh consideration after taking into account the replies of both the parties and after granting reasonable opportunity of hearing to both the parties to the show cause notice.

6. Appeals are allowed by way of remand to the original authority on the above terms.

7. The stay applications are also disposed of.

(M. Veeraiyan)
Member(Technical)

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