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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/1193/2010 ,ST/1208 , 1209 , 1238 , 1250 / 2010-SM[BR] Date **21/12/2010**

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

M/S G. B. PROFESSIONAL ASSOCIATES PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1459 – 1463 /2010-SM[BR] dated 1.12.2010 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
M/S G. B. PROFESSIONAL ASSOCIATES PVT. LTD.
201, ABHINASH MANSION, 82,
JOSHI ROAD, KAROL BAGH, NEW
DELHI-110005
2. Adv. / Consult SHRI S.P.SINGH,DIRECTORM/S G.B. PROFESSIONAL
SHRI SURESH KUMAR,C.A. M/S SINEWAVE TECHNOLGIES
SHRI AISHWARY GOYAL,C.A. M/S HIMANSHEE ENTERPRISES
SHRI TAJINDER SINGH M/S ESCORTS ASSET MANAGEMENT LTD.
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
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. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

[2] M/S SINEWAVE TECHNOLOGIES
INT,53, DOUBLE STOREY, NEW RAJINDER NAGAR NEW DELHI-60.

[3] M/S HIMANSHU ENTERPRISES
AG-641, SHALIMAR BAGH NEW DELHI-88.

[4] M/S TECHROOTS SOLUTIONS PVT.LTD.
3, RAM KISHORE ROAD, CIVIL LINES DELHI-54.

[5] M/S ESCORTS ASSET MANAGEMENT LIMITED,
11, SCINDIA HOUSE, CONNAUGHT CIRCUS NEW DELHI

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing: **01.12.2010**
Date of decision: **01.12.2010**

For approval and signature:
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Service Tax Appeals Nos.1193, 1208, 1209, 1238, & 1250 -Excise

[Arising out of common Order-in-Appeal No.86/ST/DLH/2010 dated 12.05.2010 in Appeal No.ST/1193, Order-in-Appeal No.97/ST/DLH/2010 dated 26.05.2010 in Appeal No.ST/1208, Order-in-Appeal No.102/ST/DLH/2010 dated 31.05.10 in Appeal No.ST/1209, Order-in-Appeal No.109/ST/DLH/2010 dated 31.05.10 in Appeal No.ST/1238 and Order-in-Appeal No.124/ST/DLH/2010 dated 09.06.10 in Appeal No.ST/1250 of 2010-SM (BR) passed by the Commissioner of Central Excise (Appeals), New Delhi].

Commissioner of Service Tax, Delhi ....Appellants

Vs.

(1)G.B.Professional Associates
(2)Sinewave Technolgies Int.
(3)Himanshu Enterprises
(4)Techroots Solutions (P) Ltd.

(5)Escorts Asset Management Ltd. ...Respondents

Appearance:
Rep. by Shri Rajendra Gupta, DR for the Department (Appellant)
Rep. by Shri S.P.Singh, Director in M/s.G.B. Professional Associates
Rep. by Shri Suresh Kumar, C.A. in M/s.Sinewave Technolgies
Rep. by Shri Aishwarya Goyal, C.A. in Himanshee Enterprises
Rep. by none for Techroots Solutions (P) Ltd.
Rep. by Shri Tajinder Singh in Escorts Asset Management Ltd.

CORAM: Hon'ble Mr. Rakesh Kumar, Member **(Technical)**

Final Order No. 1459-1463/2010 SM (BR)/Dated: 1.12.2010

Per Rakesh Kumar:

These are the appeals filed by the Revenue against the orders-in-appeals passed by the Commissioner (Appeals). Revenue has come in appeal before the Tribunal against the Commissioner (Appeals)'s orders on the ground that the Commissioner (Appeals) has set aside the impugned orders and allowed the appeals of the Respondents by way of remand which is not legal and proper, as the Commissioner (Appeals) in view of the judgment of Hon'ble Supreme Court in the case of MIL India Ltd. reported in 2007 (210) ELT 188 (SC) has no powers for remand.

2. Heard both sides.

3. Shri Rajendra Gupta, Ld. DR assailed the impugned order pleading that in all these cases, the allegation against the respondents were that they had not paid or short paid the service tax during certain periods and the service tax demands along with interest had been confirmed on that

basis, that the Commissioner (Appeals) after considering the respondent's plea that there is no short payment and the service tax respect of which show cause notices had been issued, had already been paid, set aside the demands, but at the same time directed the original adjudicating authority to verify the original duty paying documents, that the Commissioner (Appeals) before setting aside the service tax demands should have satisfied himself about the genuineness of the original duty paying documents, that in respect of the Cenvat credit also, the Commissioner (Appeals) has remanded the matter to the original adjudicating authority while he himself should have examined the relevant documents and should have given a finding with regard to correctness of the quantum of cenvat credit, that it is settled law that under the provisions of Section 85 of the Finance Act, 1994 read with Section 35 A of the Central Excise Act, 1944, the Commissioner (Appeals) does not have the powers to remand the matter and in respect of the appeals filed before him, he has to give a finding after calling for the necessary records, if required, and in view of this, the impugned orders are not correct.

4. Shri S.P. Singh, representing Shri G.B. Professional Associates (P) Ltd., Shri Suresh Kumar, Chartered Accountant, representing M/s. Sinewave Technlogies, Shri Aishwarya Goyal, Chartered Accountant representing M/s. Himanshree Enterprises and Techroots Solutions (P)

Ltd. and Shri Tejendra Singh, Chartered Accountant representing M/s. Escorts Asset Management Ltd. pleaded that in these cases the allegation against them that they had not paid the service tax by due date or had short paid the service tax is incorrect, as there was no short payment and the service tax had been paid by the due date, that in spite of service tax having been paid by them by the due date, show cause notices were issued alleging short payment/non-payment and service tax demand confirmed against them and that the Commissioner (Appeals) has rightly set aside the service tax demands subject to verification of the original duty paying documents by the original adjudicating authority. They, however, stated that they have no objection if the Commissioner (Appeals) is directed to give his findings on allegation of short payment of service tax and wrong avialment of cenvat credit after verification of the original duty paying documents himself.

5. I have carefully considered the submissions made from both the sides. In all these cases, the Commissioner (Appeals) on one hand has set aside the service tax demands accepting the respondent's plea that service tax which have been demanded had already been paid by them by the due date, but on the other hand, he has directed the adjudicating authority to verify the original duty paying documents, while before setting aside the service tax demands the necessary verification about genuineness of the tax paying documents should have been done. The orders of setting aside

the documents without verification and directing original adjudicating authority to do the verification are not correct and have to be set aside.

6. Similarly, with regard to the availment of the Cenvat credit also, he has directed the original adjudicating authority to verify the relevant documents and come to a reasoned conclusion regarding the admissibility or otherwise on the cenvat credit. The provisions of appeal to Commissioner (Appeals) in Section 85 of the Finance Act, 1994 are pari materia with the provisions of appeals to the Commissioner (Appeals) in Section 35 A of the Central Excise Act, 1994 and with regard to Section 35 A, the Hon'ble Supreme Court in the case of MIL India Ltd. (supra) and Hon'ble Punjab & Haryana in the case of B.C. Kataria reported in 2008 (221) ELT 508 (P&H) has held that after amendment of Section 35 A of the Central Excise Act, 1994 w.e.f. 11.5.2001, the Commissioner (Appeals) has no powers to remand any matter. The ratio of the Supreme Court and the Hon'ble Punjab & Haryana High Court is applicable to the appeals filed before the Commissioner (Appeals) in service tax matters under Section 85 of the Finance Act, 1994. Therefore, the Commissioner (Appeals) does not have the powers to remand the matter and for deciding an appeal filed before him, if necessary, he has to call for the records and give his findings.

7. In view of the above, the impugned orders are set aside and the Commissioner (Appeals) is directed to give his clear findings after

examining the records regarding payment of service tax and availability of Cenvat credit. The revenue's appeals stand disposed of as above.

[Operative portion pronounced in open court].

(Rakesh Kumar)
Member (Technical)

Ckp.