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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/245 /2008 – SM[BR]

Date 05/01/2010

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

C.C.E. DELHI II — Appellant

Vs

M/S K.C.METAL STORE — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 5 / 2010 –SM[BR] dated 23.12.2009 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 K.C.METAL STORE
   WH-57, MAYAPURI INDUSTRIAL AREA,PHASE-II.NEW DELHI-110064
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)

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

Date of hearing/decision: 23.12.2009

Excise Appeal No. 245 of 2008-SM

[Arising out of order in Appeal No. 135-CE/DLH/2007 dated 16.11.2007 passed by the Commissioner (Appeals) Central Excise, Delhi-II].

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?	

CCE, Delhi-II — Appellants

Vs.

M/s K.C. Metal Store — Respondents

Appearance:

Appeared for the Appellants – Shri Sansar Chand, DR

Appeared for the Respondents – None

Coram: Hon'ble Shri Rakesh Kumar, Member (Technical)

Oral Order 05/2010 SM(BR)

Per: Rakesh Kumar:

This is an appeal filed by the Revenue against the order in Appeal No. 135-CE/DLH/2007 dated 16.11.2007 passed by the Commissioner Central Excise (Appeals) Delhi-II remanding the matter to the original adjudicating authority for denovo adjudication with regard to the question of penalty and interest. The revenue has filed this appeal on the ground that after the amendment of Section 35A w.e.f. 11.05.2001, the Commissioner (Appeals) has no power to remand the matter.

2. None appeared for the respondent. The respondent vide letter dated 20.11.2009 had requested for decision of this matter on merit.

3. Heard the learned DR Shri Sansar Chand who pleaded that the issue involved in this case stands settled in view of judgement of Hon'ble Supreme Court in the case of **MIL India Ltd.**, vs. **CCE, Noida** reported in 2007 (79) RLT 1 (SC) wherein it was held that after the amendment of Section 35A w.e.f. 11.05.2001 the Commissioner (Appeals) have no power of remanding any matter back to the original authority. In view of this the part of the impugned order remanding the matter to the original adjudicating authority is set aside and the Commissioner (Appeals) is directed to decide the issues which had been remanded by him. The revenue's appeal is accordingly allowed.

(Rakesh Kumar)
Member (Technical)

/Pant/