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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 26/02/2010

Appeal No. E/3230/2006 – SM[BR]

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

To :
C.C.E.KANPUR
117/7,SARVODAYA NAGAR,KANPUR. Appellant

C.C.E.KANPUR Vs
Respondent

M/S GANESH POLYTEX LTD(UNIT-I)

I am directed to transmit herewith a certified copy of **Final order No**. 267 / 2010 –SM[BR] dated 24.2.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S GANESH POLYTEX LTD(UNIT-I)
   (UJNIT-I) RANIA,KANPUR(DEHAT)
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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
NEW DELHI

COURT NO. II

Excise Appeal No. 3230 of 2006-SM

(Arising out of Order-in-Appeal No. 294-CE/APPL./KNP/2006 dated 7.7.06 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur)

CCE, Kanpur — Appellant

Vs.

M/s Ganesh Polytex Ltd. — Respondent

Date of Hearing: 17.2.2010

Appearance :

Appeared for Appellant - Shri S.N. Srivastava, DR
Appeared for Respondent - Shri Hemant Bajaj, Advocate

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

Final Order No. 267/2010 SM(BR) dated............

Per D.N. Panda:

Similar such matter on maintainability of Revenue's appeal in absence of authorisation has been repeatedly coming before this Bench. When an order was passed on 31.12.09, a preliminary objection was raised by Respondent as to absence of authorisation for maintainability of appeal of Revenue. In view of such an objection, the matter was adjourned to 8.2.2010 to enable Revenue to defend. On

8.2.2010, copy of note sheet authorising the appeal was filed by Revenue. A copy thereof was served on the Respondent for examination and reply. Consequently the matter was adjourned to 16.2.2010. When the matter came up that day, to grant an opportunity to Revenue to defend in the light of the various judgements of Hon'ble High Courts, the matter was adjourned to 17.2.2010. Accordingly, the matter reached today for disposal.

2. Ld. Counsel Shri Bajaj has same repetition of objection as to the maintainability of appeal. He relies on the decision of the Hon'ble High Court of Punjab & Haryana in the case of **CCE Vs. M/s BE Office Automation Products Pvt. Ltd.** reported in 2009-TIOL-721-HC. His submission is that the Hon'ble High Court has found a fact in that case that there was no authorisation at all in the eyes of law for which Revenue's appeal was dismissed. But learned DR Shri Srivastava opposes such submission of the Respondent on the ground that the xerox note sheets shows reasons for filing of the appeal. Such reasons were also approved by the Committee of Commissioners for which appeal of Revenue is maintainable.

4. Heard both sides and also perused the record.

5. The note sheet copy filed by Revenue brings out displeasure of Revenue on the first appeal order. The note dated 7.8.06 was placed before ld. Commissioner, Allahabad. He has simply signed the note on 29.8. without his name and designation under his signature. After his signature there is a note under a signature dated 18.9.2006

reading as "as ordered draft appeal for CESTAT, New Delhi is put up for approval and sig. please" appears. The note appeared on 18.9.06 and travelled through various authorities on 19.9.06, 20th Sept. 2006, 21.9.2006. The last signature appears on 21.9.06. Such signature does not show the name of the authority who signed nor his designation. But the DR's submission is that the said signature was of another Commissioner.

5. The factual matrix above indicates casual approach of Revenue and there was no decision of Committee of Commissioner to order for filing an appeal. When the authorities are designated to discharge the duty in the manner prescribed by law, failure to do so results in no decision. When law requires an authority to act in a particular manner to decide the fate of Revenue there should not have been any deviation to the procedure known to law. Hon'ble High Court of Punjab & Haryana in the case of **M/s BE Office Automation** (supra) has observed that there was no decision of the Committee on record except the signature of the Commissioner, Delhi-III obtained on 19.12.05 and the signatures of Commissioner, Rohtak obtained on 27.12.05. Both the Commissioners have not even said that they agree with opinion of the Assistant Commissioner rendered in the note. The Hon'ble High Court has gone on noticing that there was no opinion expressed by the Committee of Commissioners and Tribunal did not seem to be oblivious of the fact. The observations of the Tribunal were clear that in the absence of order of authorisation no appeal was competent. With these observations, the Hon'ble High Court viewed

that there was no evaluation/examination by the Committee of Commissioner in respect of the order passed by the Commissioner (Appeals) leading to the formation of opinion by them to file an appeal before the Tribunal. Thus the Court held that the appeal was not instituted according to law. Even Revenue's prayer that after dismissal of appeal by the Tribunal, the defects were removed did neither get judicial cognizance nor consideration. Therefore the Court held that once the fundamental element of formation of opinion of filing an appeal is missing then no appeal is deemed to be instituted in the eyes of law.

7. Following aforesaid ratio laid down by the Hon'ble Punjab & Haryana High Court and also the ratio laid down by the Hon'ble Gujarat High Court in the case of **CCE & C Vs. Shree Ganesh Dying & Printing Works** reported in 2008 (89) RLT 549 and **CCE & C Vs. Siddharth Petro Products Ltd. & Anr.** reported in 2008 (89) RLT 554, Revenue's appeal suffers from legal infirmity and is not maintainable. Thus dismissed.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

RM