REGISTERED / AD

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Date 25/01/2010

Appeal No. E/138 /2006 - EX[DB]

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

To :
C.C.E. MEERUT I
EXCISE CHOWK, UNIVERSITY ROAD, MANGAL
PANDEY NAGAR, MEERUT - 250005.

Appellant
Vs
Respondent

- C.C.E. MEERUT I

DAURALA SUGAR WORKS.

I am directed to transmit herewith a certified copy of **Final order No. 23/ 2010 EX[DB]** dated 18-1-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   DAURALA SUGAR WORKS.
   DAURALA SUGAR WORKS.DAURALA, MEERUT.
2. Adv. / Consult
   MR.S.C. KAMRA & CO.
   B-2/210(BASEMENT), SAFDARJUNG ENCLAVE, NEW DELHI- 110029

3 C.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-1
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Appeal No. 138 of 2006

(Arising out of Order-in-Appeal No. 173-CE/MRT-I/2005 dated 30.9.2005 passed by the Commissioner (Appeals), Central Excise, Meerut-I)

CCE, Meerut — Appellant

Vs.

M/s Daurala Sugar Works — Respondent

Date of Hearing: 6.1.2010

Appearance :

Appeared for Appellant - Shri S.R. Meena, SDR
Appeared for Respondent - Shri S.C. Kamra & Shri G.K. Mahajan, Advocates

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

FINAL Order No....23/2010-Ex.......dated............

Per D.N. Panda:

When the matter was taken up, we noticed that there is no authorisation by the Committee for appealing the matter before the Tribunal. Section 35(B) (2) of Central Excise Act, 1944 requires that the Committee through the process of Authorisation apply its mind to draw a conclusion whether the order appealed is legal and proper before exercising right of Appeal by Revenue. It serves twin objects:

(1) Filing of undesirable appeals is avoided; and (2) Filing of desirable appeals do not escape to meet scrutiny of higher appellate authority. Such decision for filing appeal is carried out through process of scrutiny by a Committee of Commissioners reflecting their mind by a speaking order of Authorisation. Elementary Rule or law requires that there should not be empty formality followed to seek remedy of appeal nor the process of law prescribed to be followed is given go bye. Accordingly, appeal before Tribunal is sought through the scrutiny process of Authorisation. A preliminary decision as to legality and propriety of the order appealed is *sine qua non* before seeking appeal remedy following the decision of Hon'ble High Court of Gujarat in the case of **CCE Vs. Shree Ganesh Dyeing & Ptng. Works** reported in 2008 (232) ELT 775. Present appeal suffers from legal infirmity in absence of authorisation issued by the Committee of Commissioners with clear mandate to seek Appeal drawing conclusion that the order appealed was neither legal nor proper on the given circumstance of the case exhibiting application of mind of the Committee.

2. Hon'ble High Court of Punjab & Haryana in the matter of authorisation has noticed that Revenue has been making casual approach in seeking appeal remedy for which Revenue's appeal in the case of **CCE Delhi Vs. B.E. Office Automation Products Pvt. Ltd.** reported in 2010 (249) ELT 24 was dismissed. The Hon'ble High Court has expressed its anxiety stating that the Hon'ble Court

does not prefer to make Revenue non-suit but cases after cases having come forward to Hon'ble High Court with the legal infirmities, the Hon'ble High Court was to dismiss that appeal of Revenue. In view of such scenario, the present Appeal without being supported by authorisation is bound to be dismissed. We order accordingly.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM