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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Date 06/04/2010

Appeal No. E/218 /2006 - EX[DB]

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

To :
NIRMAL PRODUCTS
MALI COLONY.NATHDWARA, DISTT RAJSAMAND.

NIRMAL PRODUCTS — Appellant
Vs
C.C.E. JAIPUR I — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 141/ 2010 EX[DB]** dated 01-4-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult SH. ATUL GUPTA, ADV., B-1/1289-A, VASANT KUNJ, N. DELHI-70
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-15
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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

E/218/06

(Arising out of order-in-appeal No.829(HKS)/CE/JPR-II/2005 dt.28.11.05 passed by the Commissioner(Appeals), Jaipur)

M/s. Nirmal Products — Appellants

Versus

CCE, Jaipur — Respondent

Appearance
Sh. Atul Gupta, CS For Appellants

Sh. S.R.Meena, DR for Respondent

Coram: Hon'ble Mr. D.N.PANDA, MEMBER(JUDICIAL)
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of hearing : 11.3.2010
Final Order No 141/2010

Per D.N.Panda:

This matter came up yesterday. When the matter touches the limitation aspect, we required the learned Counsel to place a date chart. He has done so today.

2. It is argued for Appellant that the appellant was before the learned first appellant authority duly in accordance with law. It was also a fact that the order-in-original was sent to the appellant by courier by the Revenue Authority which is patent from para 3 of the appellate order. We find from law that there is no modality

of dispatch of orders by courier is prescribed under the law. In order to avoid difficulties, section 37C is specifically designed to appear in the Statute Book to maintain evidence for benefit of both the sides showing service of documents prescribed by that section. If such a modality is not followed, the order-in-original can be said to have been not served on the assessee. Therefore, the appellant cannot be denied justice taking shelter of the order sent by courier.

3. Learned DR supports the order of the Appellate Authority below and submits that the service of the order by courier is a good service when acknowledgement was obtained.

4. Heard both sides and also gone through the modality of dispatch done by courier. There is nothing brought to record that there was emergency to serve the order by courier. Section 37C has made provision for service of decision, order, summons or notices issued by the Department by registered post with acknowledgement due. Public authorities cannot act beyond the modality prescribed by law. If they act beyond the scope of law or in defiance of law, they are said to have not exercised the Authority in accordance with law. We do not approve the modality of dispatch of order-in-original by courier when law does not prescribe such modality for service. Therefore, learned Commissioner should have taken into consideration that law does not permit him to approve the courier service to deliver the order-in-original. He should decide the appeal on merit calling for

explanation of the Adjudicating Authority why such a breach of the law was done going beyond the mandate of law under Section 37C of the Central Excise Act,1944. Accordingly, we also direct the learned Commissioner(Appeals) to send a note stating above breach of law to higher authority to safeguard interest of justice and interest of Revenue without being challenged on such substantial issue. Matter is, therefore, remanded for disposal of appeal to Commissioner(Appeals) as per law.

Order dictated in the open Court.

(D.N.Panda)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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