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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 27/10/2010

Appeal No. E/1725/2010 - EX[DB] WITH
E/S/1729/2010-EX

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

Appellant

C.C.E. DELHI II

Vs

Respondent

M/S. ENGINEERING TECHNICO INDIA STAY ORDER NO.778/2010-EX

I am directed to transmit herewith a certified copy of **Final order No.** 728/ 2010 **EX[DB]** dated 11-10-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

**Copy to :**

1. Respondent
   M/S. ENGINEERING TECHNICO INDIA
   619/80, CHATTARPUR MEHRAULI, NEW DELHI.
2. Adv. / Consult SH. P. RANJAN, ADV.,
   LGF-6/33-33A, VIKRAM VIHAR,
   LAJPAT NAGAR-IV, N. DELHI-24
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. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd. LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file
16. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

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

Date of hearing/decision 11.10.2010

**Excise Stay No. 1729 of 2010 in Excise Appeal No. 1725 of 2010**

CCE, Delhi-II — Appellant

Vs.

M/s Engineering Technico India — Respondent

Appearance:

Rep. by Sh. Nitin Anand, DR for the appellant.
Rep. by Sh. P. Ranjan, Advocate for the respondent.

**Coram:** **Hon'ble Sh. Justice R.M.S. Khandeparkar, President**
**Hon'ble Sh. P. Karthikeyan, Member (Technical)**

STAY ORDER No. 778/10-EX

**Per: Justice Sh. R.M.S. Khandeparkar**:

Heard the DR for the appellant and learned Advocate for the respondents. As we propose to dispose of the appeal itself, the application is disposed of with direction to the registry to place the appeal itself for final hearing forthwith.

(Justice R.M.S. Khandeparkar)
President

(P. Karthikeyan)
Member (Technical)

Pant

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

Date of hearing/decision 11.10.2010

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri P. Karthikeyan, 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. | Yes |
| 2 | Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | No |
| 3 | Whether Their Lordships wish to see the fair copy of the Order? | Seen |
| 4 | Whether Order is to be circulated to the Departmental authorities? | Yes |

**Excise Appeal No. 1725 of 2010**
[Arising out of order-in-appeal No. 162-163/CE/D-II/2010 dated 20.04.2010 passed by the Commissioner (Appeals) Central Excise, New Delhi]

CCE, Delhi-II — Appellant

Vs.

M/s Engineering Technico India — Respondent

Appearance:

Rep. by Sh. Nitin Anand, DR for the appellant.
Rep. by Sh. P. Ranjan, Advocate for the respondent.

**Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President**
**Hon'ble Sh. P. Karthikeyan, Member (Technical)**

FINAL ORDER NO 728/10-Ex.

**Per: Justice Sh. R.M.S. Khandeparkar**:

This appeal is taken up for hearing in terms of order passed in stay application No. 1729 of 2010. Heard the DR for the appellant and learned Advocate for the respondent.

2. The challenge to the impugned order amongst other grounds is that the Commissioner (Appeals) has no jurisdiction to remand the matter. In case the Commissioner (Appeals) finds any infirmity in the order passed by the adjudicating authority, the Commissioner (Appeals) is empowered to set aside such order of the adjudicating authority and thereafter on fresh consideration of all the materials on record to pass an appropriate order. The impugned order clearly discloses that the Commissioner (Appeals) has exercised the jurisdiction not vested in him.

3. Bare perusal of the impugned order discloses that the Commissioner (Appeals) having found the adjudicating authority failed to comply with the directions of the Tribunal, has set aside the said order and remanded the matter for fresh consideration thereof by the adjudicating authority.

4. It is well settled by various decisions of the Tribunal, based on the decision of the Supreme Court that, the Commissioner (Appeals) lacks jurisdiction to remand the matter. Being so, the appellants are justified in contending that the impugned order is not maintainable.

5. Having said as above, perusal of the order passed by the Additional Commissioner, Central Excise, Delhi-II on 30.04.2009 being order No. 1/2009- 10 discloses the same to have been passed without considering the matter on merits. Undisputedly, the Tribunal vide its order dated 08.08.2006 in Excise Appeal Nos. 1999 & 2000 of 2004 had remanded the matter for fresh adjudication after supplying the copies of the relevant documents to the assessee.

6. The adjudicating authority has observed that all the documents have been supplied to the assessee. However, having said so, the adjudicating authority failed to consider the materials on record and to ascertain whether the same supports the case of the assessee or that of the department and merely because all copies of documents had been furnished to the assessee, proceeded to confirm the earlier order. Once the Tribunal had directed fresh adjudication, it was necessary for the adjudicating authority to analysise the entire records afresh and to decide the matter afresh in accordance with provisions of law.

7. Being so, though the impugned order cannot be sustained on account of lack of jurisdiction to remand the matter, at the same time the order of the adjudicating authority also cannot be sustained and it will be necessary for the adjudicating authority to decide the matter afresh in terms of the directions issued by the Tribunal under order dated 08.08.2006.

8. In view of what is stated above, therefore, while allowing the appeal, and while setting aside the impugned order as well as that of adjudicating authority, the matter is remanded to the adjudicating authority to dispose of the proceedings in terms of the order of the Tribunal passed on 08.08.2006 in Excise Appeal Nos. 1999 & 2000 of 2004. Appeal accordingly stands disposed of.

(Justice R.M.S. Khandeparkar)
President

(P. Karthikeyan)
Member (Technical)

Pant