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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/706 , 707 , 719 , 732 / 2009 -SM[BR] Date 16/11/2010

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR Appellant
Vs
M/S ULTRATECH CEMENT LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1239 – 1242 / 2010-SM[BR] dated 22.10.2010 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 ULTRATECH CEMENT LTD
   HIRMI CEMENT WORKS, HIRMI, DISTT-RAIPUR(CG)

[2]M/S SHREE BAKHE BIHARI ISPAT[P] LTD.
PLOT NO. 174, JINDAL INDUSTRIAL PARK,
PUNJIPATHRI,DISTT-RAIGARH[CG]

[3] M/S INDIAN EXPLOSIVES LTD.
DISTT-KORBA,[CG]

[4]M/S OM SHAKTI TOBACCO CO.
WARD NO. 2, MARAR PARA, STATION ROAD,
BALOD DISTT-DURG[C.G]

2. Adv. / Consult SHRIV.LAKSHMIKUMARAN ADV.
   B-6/10, SAFDARJUNG ENCLAVE
   NEW DELHI-29.
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. 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

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH

Excise Appeal No.706 of 2009
Excise Appeal No.707 of 2009
Excise Appeal No.719 of 2009
Excise Appeal No.732 of 2009

(Arising out of Order-in-Appeal No.32(ST)RPR-I/2008 dt. 26.11.08, No.155/RPR-I/2008 dt.15.12.08, 158/RPR-I/2008 dt.15.12.08 and No.03-04/RPR-II/2009 passed by the CCE(A), Raipur)

Date of Hearing: 22.10.2010
Date of Decision: 22.10.2010

For approval and signature:
Hon'ble Mr.Ashok Jindal, Member (Judicial)

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, Raipur — Appellant

Vs.

1.M/s.Ultratech Cement Ltd. — Respondent
2.M/s.Shree Banke Bihari Ispat (P) Ltd.
3.M/s.Indian Explosives Ltd.
4.M/s.Om Shakti Tobacco Co.

Present for the Appellant: Shri K.P.Singh, SDR
Present for the Respondent: Shri Hemant Bajaj, Advocate

Coram: Hon'ble Mr.Ashok Jindal, Member (Judicial)

Final ORDER NO. 1239-1242/2010 SM(BR)

PER: ASHOK JINDAL

The Revenue has filed these appeals against the impugned orders of the Commissioner (Appeals) who has remanded the matter back to the adjudicating authority to decide issue.

2. The learned DR appearing on behalf of the Revenue submits that with effect from 11.5.2001, the power of remand has been taken away from the Commissioner (Appeals) as per Finance Act, 2001. Hence, the Commissioner (Appeals) has no power to remand the matter to the adjudicating authority. Accordingly, the impugned orders are to be set aside.

3. Heard and considered.

4. Considering the fact that that the power of remand has been taken way from the Commissioner (Appeals) as per Finance Act, 2001. With effect from 11.5.2001, the Commissioner (Appeals) cannot remand the case to the adjudicating authority. In fact, the Commissioner (Appeals) has to deal with the issue and decide the same. As held by the Apex Court in the case of MIL India vs. CCE, Nodia reported in 2007 (210) ELT 188 (SC), the Commissioner (Appeals) has no power of remand with effect from 11.5.2001. Accordingly, I set aside the impugned orders and the matters are remanded back to the Commissioner (Appeals) to decide the issue afresh after giving an opportunity to both sides to defend their case.

(Pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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