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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. **ST/1666/2010 – SM [BR]** Date **09/06/2011**

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

To :
M/S DEEPAK SPINNERS LIMITED
VILLAGE PAGARA, DISTT: GUNA

M/S DEEPAK SPINNERS LIMITED Appellant

Vs

C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No. 301 / 2011-SM[BR]** dated 23.5.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult SHRI ABHISHEK JAJU ADV.
F-78, FF, LAJPAT NAGAR-II,
NEW DELHI-24.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:23.5.2011

Central Excise Appeal No.1666 of 2010 -SM

Arising out of the order in appeal No.IND/221/2010 dated 17-8-2010 passed by the Commissioner (Appeals), Customs & Central Excise, Indore.

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 26 of 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

Deepak Spinners Limited .. Appellants

Vs.

C.C.& C.Ex., Indore .. Respondent

Appearance:

Shri A. Jaju, Advocate for the appellants
Shri K.P. Singh ,Authorised Departmental Representative (DR) for the respondent

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President

Final Oral Order No. 301/2011 SM(BR)

Per Shri Justice R.M.S. Khandeparkar:

Heard the DR for the appellant and none present for the respondents. This appeal arises from the order dated 17.8.2010 passed by the Commissioner

(Appeals). The impugned order is sought to be challenged on various grounds. It is not necessary to deal with all those grounds and suffice to refer to only one ground namely that the Commissioner (Appeals) while he was Commissioner in terms of Section 84(1) of the Service Tax law had ordered review of the order passed by the adjudicating authority and had directed filing of the appeal. But he himself heard and disposed of the appeal. By the impugned order, reliance is placed in this regard in the matter of **Commissioner, Central Excise, Indore vs. Life Care** reported in 2011 (22) STR 29. The DR has tried to justify the impugned order while contending that the impugned order is well reasoned order and that no objection was raised before the Commissioner (Appeals) before passing of the impugned order.

2. Section 84(1) of the Service Tax law provides that "*the Commissioner, Excise, may of his own motion the Commissioner of Central Excise may, of his own motion, call for and examine the record of any proceedings in which an adjudicating authority subordinate to him has passed any decision or order under this Chapter (v) of the Finance Act 1994 for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any Central Excise Officer subordinate to him to apply to the Commissioner of Central Excise (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Central Excise in his order*".

3. Undisputedly, the appeal filed by the Department pursuant to the said direction by the Commissioner lies before the Commissioner(Appeals). In the case in hand, it is not in dispute that order dated 4.1.2010 was passed by Shri G.R. Meena in his capacity as the Commissioner, Indore and had directed the filing of the appeal against the order dated 11.11.2009 passed by the Assistant Commissioner, Gwalior. Accordingly, the Department had filed appeal and the same came up for hearing before the Commissioner (Appeals), Indore. Meanwhile, Shri G.R. Meena was appointed as Commissioner (Appeals), Indore. When the said

app[illegible] came up for hearing before him, he himself in his capacity as Commissioner (App[illegible]ls), Indore, proceeded to hear the appeal and disposed of the same.

4. Once Shri G.R. Meena in his capacity as Commissioner, Indore had formed opinion under directions issued on dated 4.1.2010 that the order dated 11.11.2009 by the Assistant Commissioner, Gwalior needed to be challenged in appeal, it was not permissible for Shri G.R. Meena to hear the appeal against the said order. Indeed, the law as laid down in that regard in **Life Care** case (supra) ought to have been followed by Shri G.R. Meena.

5. The law on the point that the authority which has already formed opinion about impropriety or illegality of the order passed by the lower authority and on the basis of formation of such opinion had directed the Department to file appeal against the order of the lower authority cannot thereafter sit in appeal against such order of the lower authority is well settled and needs no further elaboration. Since in the case in hand, the review order under Section 84(1) was passed by Shri G.R. Meena in his capacity as Commissioner, Indore, then Shri G.R. Meena himself could not have heard and decided the appeal in capacity of Commissioner (Appeals). On this ground alone, the impugned order is liable to be set aside.

6. Accordingly, the appeal succeeds. The impugned order is set aside and the matter is remanded to the Commissioner (Appeals) to hear the same afresh and decide the same in accordance with the provision of law. Needless to say that the matter should not be heard by Shri G.R. Meena for the reasons stated above.

7. The appeal accordingly stands disposed of.

(Justice R.M.S. Khandeparkar)
President

scd/