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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/1021/2010 – SM[BR]** Date **30/06/2011**

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

To :
C.C.E. MEERUT I

EXCISE CHOWK,OPPOSITE CHOUDHARY CHARAN
SINGH UNIVERSITY MANGAL PANDAY NAGAR,
MEERUT - 250005.

C.C.E. MEERUT I Appellant

Vs

M/S LIFE INSURANCE CORPORATION OF INDIA, Respondent

I am directed to transmit herewith a certified copy of **Final order No. 353 / 2011 –SM[BR]** dated 22.6.2011

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
M/S LIFE INSURANCE CORPORATION OF INDIA,
KHATAULI, DISTT,
MUZAFFARNAGAR. (UP)

2. Adv. / Consult
NONE:----------------------

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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

COURT NO. II

Date of Hearing : 22.6.2011

Service Tax Appeal No. 1021 of 2010-SM

[Arising out of the Order-in-Appeal No. 297-CE/APPL/MRT-I/2010 dated 31.3.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut-I]

Coram:

Hon'ble Mr. Mathew John, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

CCE, Meerut-I — Appellant

Vs.

M/s Life Insurance Corporation of India — Respondent

Appearance:

Appeared for Appellant : Shri S.K. Bhaskar, SDR
Appeared for Respondent : None

CORAM: Hon'ble Mr. Mathew John, Member (Technical)

Final Order No. 353 | 2011 SM(BR) dated............

Per Mathew John:

When the case was called none was present to represent the respondent. On previous two occasions also the Respondent was not represented. So the case was taken up ~~with~~ and studied with the help of the Ld. DR.

2. During 10-09-2004 to 31-10-2004, the Respondent, the Branch of Life Insurance Corporation of India at Khatauli (Muzaffarnagar, U.P.) was registered with Central Excise Division-I at Muzaffarnagar for payment of service tax on Life Insurance Service and Insurance Auxiliary Service rendered by the branch. It appeared that it had not paid service tax as applicable during the impugned period. So a Show Cause Notice was issued to the Respondent demanding service tax amounting to Rs.4,35,490/-.

3. In reply the Respondent submitted that LIC had switched over to payment of service tax on a centralized basis, at Mumbai for all its branches and the impugned amount was paid by its Central Office and submitted copies of certain documents to prove the submission.

4. The said SCN was adjudicated vide the impugned order. The adjudicating authority was not satisfied that Khatauli Branch was included in Centralized registration for the impugned period. He was also not satisfied that the payments made by the Central Office included the impugned amount. So he confirmed the demand for Rs. 4,35, 490/- with appropriate interest. Further penalty under section 76 of Finance Act 1994 was imposed.

5. Aggrieved by the order the Respondent filed an Appeal with Commissioner (Appeal). Commissioner (appeal) was satisfied that Khatauli branch was included in the Centralized registration. But he observed that to confirm whether the impugned tax amount was paid there was need to verify the trial balance of the Branch, the Divisional Office and Balance Sheet of the Corporation and remitted the matter to the adjudicating authority for verification of the documents and for taking proper decision.

6. Aggrieved by the Order of Commissioner (Appeal), the Department has filed this appeal. The ground given is that after the amendment in Central Excise Act carried out by Finance Act 2001,

Commissioner (appeal) has no power to remit the matter for de-novo adjudication and she should have called for the necessary records and decided the case herself.

7. The powers of Commissioner (Appeal) in this regard is regulated by section 85(5) of Finance Act 1994. As per this section the powers that are available under Central Excises Act 1944 are applicable. The Apex Court in the case of **Mil India Ltd Vs. CCE** -2007 (21) ELT 188 SC, observed that after amendment of Central Excise Act 1944 by Finance Act 2001, the Commissioner (Appeal) has no power to remand any case back to the adjudicating authority for de-novo decision. So the order of Commissioner (Appeal) is not legal and proper and hence is set aside.

8. Thus the Appeal filed by the Department is allowed. The case is remitted back to the Commissioner (Appeal) with the direction that he may call for documents, as considered necessary, and scrutinize them and pass appropriate order.

(Pronounced in open Court)

(Mathew John,
Member (Technical)