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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. ST/552 /2011 - CU[DB] Date **03/01/2012**
ST/COD/129/11, ST/M/199/11

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

To :
M/S INDIA INSTITUTE OF PETROLEUM,
MOHKAMPUR, HARIDWAR ROAD, DEHRADUN.

M/S INDIA INSTITUTE OF PETROLEUM, Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.**ST/663/ **2011 CU[DB]** dated 23.12.11 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Alongiwith Misc Order No ST/236-37/11

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. MEERUT I
EXCISE CHOWK,OPPOSITE
CHOUDHARY CHARAN SINGH
UNIVERSITY MANGAL PANDAY
NAGAR, MEERUT - 250005.
2. Adv. / Consult
MR.A.K.RAHA,ADVOCATE
J-1967, FLAT NO 4, C.R.PARK, N DELHI.
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
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 - 110005
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
(Customs Appeal Branch)

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

DIVISION BENCH
Court No.3
ST/COD/129/2011 in Appeal No.ST/552/2011-Cus
ST/Misc/199/2011 in Appeal No.ST/552/2011-Cus

(Arising out of Order-in-Appeal No.257-CE/MRT-I/2010-11 dt.29.10.10 passed by the CCE & ST (Appeals), Meerut-I)
Date of Hearing/decision: 15.12.2011

For approval and signature:
Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Rakesh Kumar, 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?	No
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

Indian Institute of Petroleum — Appellant
Vs
CCE, Meerut — Respondent

Present for the Appellant: Shri A.K.Raha, Advocate
Present for the Respondent: Shri K.K.Jaiswal, SDR

Coram: Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Rakesh Kumar, Member (Technical)

Final **ORDER NO.** ST/663/11
Misc order No.ST/236-237/11

PER: ARCHANA WADHWA

Considering the fact that the delay in filing the present appeal by the applicant is only 23 days, we condone the same and allow the COD application.

2. The miscellaneous application is for listing the appeal for out of turn basis on the ground that the amount involved is around Rs.23.44 laks which pertained to the period 2001-2003.

3. Though, we find that the amount involved in the present appeal is much on the lower side which does not ~~make~~ meet the criteria for listing the appeal for out of turn basis ~~and~~ but on going through the impugned order of the Commissioner (Appeals), we find that the appeal itself can be taken for disposal, inasmuch as the short issue is involved. Accordingly after hearing both side, we proceed to decide the appeal itself.

4. For better appreciation of the dispute, we reproduce the relevant paragraph of the impugned order of the Commissioner (Appeals):-

"It is observed that the then Commissioner (Appeals), vide Order-in-Appeal NO.223-CE/MRT-I/2008 dated 31.12.2008, remanded the case back to the adjudicating authority with a direction to cause 100% verification of all the relevant documents such as periodical balance sheets for the receipt in specific heads of services alongwith documents namely invoices, purchase orders, agreements and if possible the statements, version of affidavit of the recipients of the service to critically examine and decide the issues. The appellate authority had also directed the appellants to co-operate and provide all the documents which are required by the adjudicating authority.

The adjudicating authority has again rejected the refund claim filed by the appellants on the ground that the appellants failed to submit the necessary documents for verification in compliance of the Order-in-Appeal dated 31.12.2008. Being aggrieved, the appellants *preferred the instant appeal but I find that the appellants still have not filed all the documents, as indicated supra, alongwith the appeal folder hence the necessary verification could not be done to ascertain the veracity of the issues. Hence, I have no reason to interfere with the findings of the adjudicating authority."*

5. The appellants' contention is that the original adjudicating authority rejected the refund claim on merit as also on the point that the relevant documents were not submitted before him. The Commissioner (Appeals) has also rejected the appeal on the ground non submission of documents, without considering the merits of the case. Though it is the contention of the learned Advocate appearing for the appellants ~~submits~~ that the documents were submitted before the original adjudicating authority as also before the Commissioner (Appeals), the findings of the lower authorities on this count are factually incorrect.

6. We also note that the order passed by the Deputy Commissioner was on merits as also on the point of non submission of the documents. As such, it was obligatory on the part of the Commissioner (Appeals) to deal with the case on merits and subsequently comment upon the filing of documents, inasmuch as the Commissioner (Appeals) has not given any finding on the merits of the case, we set aside the same and remand the matter to the Commissioner (Appeals) for deciding the case on merits. In case, verification of the documents is required, he can himself examine the same.

7. COD application plus miscellaneous application alongwith appeal stands disposed of in the above terms.

(Pronounced in the open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(RAKESH KUMAR)
MEMBER (TECHNICAL)

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