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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/843 /2010-845 /2010 - CU[DB]
ST/S/1614-16/2011

Date **24/01/2011**

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

To :
C.S.T. DELHI
17-B, I.P. ESTATE, IAEA HOUSE, NEW DELHI.

C.S.T. DELHI Appellant

Vs

M/S. JAISHREE EXPORTS Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/14-16/ 2011 CU[DB]** dated 21.01.11 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Alongwith Stay Order No ST/25-27/011

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
M/S. JAISHREE EXPORTS
70, KAILASH HILLS, NEW DELHI

110065
2. Adv. / Consult

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. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

C.S.T. DELHI
17-B, I.P. ESTATE, IAEA HOUSE,
NEW DELHI.

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

Date of Hearing/Decision: 21.01.2011
ST/Stay/1614-1616/10 in Appeal No.ST/843-845-/2010

(Arising out of Order-in-Appeal No.120-122/ST/D-II dated 25.03.2010 passed by the CCE (A), New Delhi)

For approval and signature:
Hon'ble Mrs.Archana Wadhawa, Member (Judicial)
Hon'ble Mr.M.Veeraiyan 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?	No

CST, New Delhi Appellant

Vs.

M/s.Jaishree Exports Respondent

Present for the Appellant: Shri Amrish Jain, SDR
Present for the Respondent: Shri K.K.Dawar, proprietor

Coram:Hon'ble Mrs.Archana Wadhawa, Member(Judicial)
Hon'ble Mr.M.Veeraiyan, Member (Technical)

Final **ORDER NO.** ST/14-16/11
Stay order No.ST/25-27/11
PER: M.VEERAIYAN

These appeals by the department are against a common order-in-appeal No.120-122/ST/D-II dated 25.03.2010 by which the Commissioner (Appeals) set aside the order of the original authority and remanded the matter to the adjudicating authority for fresh consideration. We prefer to dispose of the stay petitions and take up the appeals for final hearing.

2. Heard both the sides.

3.1. The only ground on which the appeals have been filed is that the Commissioner (Appeals) does not have the power to remand subsequent to the amendment of Section 35A with effect from 11.52001. He relied on the decision of the Supreme Court in the case of MIL India Ltd reported in 2007 (210) ELT 188 (SC).

3.2. The proprietor of the respondent firm supports the order of the Commissioner (Appeals).

4. We have carefully considered the submissions from both the sides and perused the records. It is settled law that the Commissioner (Appeals) has no power to remand the matter subsequent to the amendment of Section 35A with effect from 11.5.2001. We find that the respondents have produced the documents in support of their refund claims for the first time before the Commissioner (Appeals) and he has remanded the matter for getting these documents examined by the original authority. Therefore, we also deem it proper that the documents should be examined by the original authority and the eligibility of the claims decided.

7. In view of the above, we set aside the impugned order of the Commissioner (Appeals) and the order of the original authority and remand the matter to the original authority for

fresh consideration after examining the documents produced by the respondents before the Commissioner (Appeals) and after granting a reasonable opportunity of hearing to the respondents.

8. The appeals are disposed of above. The stay petitions also disposed of.

(Pronounced in the open court)

(ARCHANA WADHAWA)
MEMBER (JUDICIAL)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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