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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. C/504 /2010 - CU[DB], C/M/229/2011 Date **20/09/2011**

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

To :
C.C. NEW DELHI (IMPORT & GENERAL)
NEW CUSTOM HOUSE, NEAR I.G.I. AIRPORT,
NEW DELHI 110037.

C.C. NEW DELHI (IMPORT & GENERAL) Appellant

Vs

M/S TEKSHIV SYSTEM PVT. LTD. **MISC. ORDER NO.C/213/2011** Respondent

I am directed to transmit herewith a certified copy of **Final order No.**C/419/ **2011 CU|DB|** dated 15.09.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
M/S TEKSHIV SYSTEM PVT. LTD.
B-3/95, SAFDARJUNG ENCLAVE,
NEW DELHI.

2. Adv. / Consult MR. PIYUSH KUMAR,
B-25, LAJPAT NAGAR-III,
NEW DELHI – 110 024.

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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Customs Misc. Application No.229 of 2011
In Customs Appeal No.504 of 2010

[Arising out of Order-in-Appeal No.CCA/CUS/I&G/62/10 dated 15.06.2010 passed by the Commissioner of Customs (Appeals), New Delhi].

Commissioner of Customs, N. Delhi — Appellant

Vs.

M/s. Tekshiv Systems Pvt. Ltd. — Respondent

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

1. Whether Press Reporters may be allowed to see 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

Appearance: Rep. by Mr. Sonal Bajaj, SDR for the appellants.
Rep. by Shri Piyush Kumar, Advocate for the respondent.

CORAM: **Hon'ble Smt. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No. C/419/11/Dated: 12.09.2011
Misc order No C/213/11

Per Archana Wadhwa:

After allowing the early hearing application filed by the respondent, we proceed to decide the Revenue's appeal inasmuch as a short issue is involved.

2. After hearing both the sides, we find that the Commissioner (Appeals) vide his impugned order has remanded the matter to the lower authorities by observing as under:-

> " Now it is not clear which service number is the real legal source of information for the verification of the said IMEI numbers provided by the Appellant at the time of import of the impugned goods. As the service number from where the Adjudicating Authority verified the validity of the IMEI number, was not in service at the time of personal hearing, and an alternate number as given by the Appellant is available, hence, the matter needs to be revisited by the Adjudicating Authority for verification of the IMEI numbers as per law.
>
> 8. In view of the above, the concerned Adjudicating Authority is directed to decide the case afresh after giving the Appellant to present his case within one month of the receipt of this order.
>
> 9. The appeal is disposed off as above."

3. The only grievance of Revenue is that the Commissioner (Appeals) has no powers to remand the matter after amendment to the provisions of Section 128 of the Customs Act.

4. We find that the short point involved in the present appeal is the verification of the JMB, which can only be done by the original adjudicating authority. As such, without going into the question as to whether the Commissioner (Appeals) has powers to remand the matter or not, we are of the view that as the Tribunal has admittedly the powers to remand the matter, we direct the original adjudicating authority to do the necessary verifications and re-decide the matter on the basis of the same. Revenue's appeal is disposed of in the above terms. Early hearing application is also allowed.

5. At this stage, ld. Advocate for the respondent submits that as the consignment is ~~on~~ live, the original adjudicating authority be directed to carry out the verification and re-adjudication as soon as possible. We direct the original adjudicating authority to do so preferably within a period of 8 weeks from today.

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

Ckp.