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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

EXCISE APPEAL BRANCH

Appeal No. E/3738/2010 - EX[DB] WITH E/S/3551/2010-EX Date **05/07/2011**

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 STAR PAPER MILS LTD., **STAY ORDER NO. 675/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.501/ 2011 EX[DB]** dated 24-6-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S STAR PAPER MILS LTD.,
SAHARANPUR.

2. Adv. / Consult SH. B.L. NARASIMHAN, ADV,
B-6/10, S.J. ENCLAVE,
N. DELHI-29

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 (Harvana)
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
14. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.I

E/Stay No.3551/2010 in E/Appeal No.3738 /2010

(Arising out of order in appeal No.202-CE/MRT.I/2010-11 dated 30.8.10 passed by the Commissioner of Central Excise (Appeals), Meerut-I)

Date of Hearing: 24 .6.2011

CCE, Meerut-I Appellant

Vs

M/s Star Paper Mills Ltd Respondent

Appeared for the Appellant: Shri R.K. Verma, DR
Appeared for the Respondent: Shri B.L. Narasimhan, Advocate
Shri Hemant Bajaj, Advocate

Coram: **Hon'ble Shri Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Mathew John, Member (Technical)

STAY ORDER No. 675/2011-EX

Per Justice R.M.S. Khandeparkar:

Heard DR for the Appellant and Advocate for the Respondent.

2. As we propose to dispose of the appeal itself, the application is disposed of while directing the registry to list the appeal itself for final disposal.

(JUSTICE R.M.S. KHANDEPARKAR)
President

(MATHEW JOHN)
Technical Member

MPS*

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.I

E/Appeal No.3738 /2010

(Arising out of order in appeal No.202-CE/MRT.I/2010-11 dated 30.8.10 passed by the Commissioner of Central Excise (Appeals), Meerut-I)

Date of Hearing: 24 .6.2011

For Approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Mathew John, Technical Member

1. Whether Press Reporters 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 lordships wish to see the fair copy of the order? Seen

4. Whether order is to be circulated to the Departmental Authorities? Yes

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CCE, Meerut-I — Appellant

Vs

M/s Star Paper Mills Ltd — Respondent

Appeared for the Appellant: Shri R.K. Verma, DR
Appeared for the Respondent: Shri B.L. Narasimhan, Advocate
Shri Hemant Bajaj, Advocate

Coram: **Hon'ble Shri Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Mathew John, Member (Technical)

FINAL ORDER No.501/2011-EX

Per Justice R.M.S. Khandeparkar:

Heard DR for the Appellant and Advocate for the Respondent.

2. The appeal arises from the order dated 30.8.2010 passed by the Commissioner (Appeals) Meerut. Only ground of challenge to the impugned order is that the Commissioner (Appeals) having no power of remand, could not have remanded the matter to the adjudicating authority to decide the issue of unjust enrichment.

3. Perusal of the impugned order discloses that the Commissioner (Appeals) by the impugned order, relying upon the decision of the Hon'ble Supreme Court in the case of Union of India Vs Umesh Dhiamode reported in 1998 (98) ELT 584 (SC), has remanded the matter to the adjudicating authority to decide the said issue.

4. The Apex Court in Mil India Ltd Vs CCE, Noida reported in 2007 (210) ELT 188 (SC) has held that the Commissioner (Appeals) does not enjoy the power of remand consequent to the amendment to the Customs Act and Central Excise Act. The relevant observation in this regard is reads thus:-

> *"An order of assessment under the taxing law does not become final before the adjudicating authority in every matter. It is subject to before the Commissioner (Appeals). The commissioner (Appeals) can even add or subtract certain items from the order of assessment made by the adjudicating authority and that order of the Commissioner (Appeals) could also be treated as an order of assessment. In complicated cases where costing is involved, the adjudicating authority can also refer the matter to an expert. The Act also makes provision for special audit. However, when the principle of law is involved, an appeal lies to the Appellate Tribunal under the said Act. In fact, the power of remand by the Commissioner (Appeals) has been taken away by amending*

Section 35A with effect from 11.5.2001 under the Finance Bill, 2001. Under the Notes to Clause 122 of the said Bill, it is stated that clause 122 seeks to amend Section 35A so as to withdraw the powers of the Commissioner (Appeals) to remand matters back to the adjudicating authority for fresh consideration. Therefore, the Commissioner (Appeals) continues to exercise the powers of the adjudicating authority in the matters of assessment. Under Section 35B, any person aggrieve by the order of the Commissioner as an adjudicating authority is entitled to move the Tribunal in appeal. Section 35B indicates that the decision of order passed by the Commissioner (Appeals) shall be treated as an order of an adjudicating authority."

5. In view of the said decision of the Apex Court, the Appellants are justified in contending that the Commissioner (Appeals) could not have remanded the matter and should have decided the issue by himself.

6. Having said above, we find that for deciding the issue of unjust enrichment, the parties are required to lead evidence and therefore, it would be in fitness of the case to have the matter adjudicated by the adjudicating authority. Besides, it will give opportunity to the parties, if aggrieved by the order of the adjudicating authority to exercise their right of appeal, regarding first appeal as well as the second appeal that is one before the Commissioner (Appeals) and second before this Tribunal. Bearing in this mind, though we allow the appeal and set aside the impugned order, we remand the matter to the adjudicating

authority to decide the issue of unjust enrichment. The appeal is disposed of in the above terms.

(Order dictated and pronounced in the open Court.)

(JUSTICE R.M.S. KHANDEPARKAR)
President

(MATHEW JOHN)
Technical Member

MPS*