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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

Date 27/06/2012

Appeal No. E/2666/2005-2670/2005 - EX[DB]
E/CO/195/2005

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

To :
C.C.E.MEERUT-II
SAHEED PARK NEAR ASHOK KI LAT DELHI ROAD
MEERUT U.P

C.C.E.MEERUT-II Appellant

Vs

M/S HSA CHADHA EXPORTS Respondent

I am directed to transmit herewith a certified copy of **Final order No.** A/729-733 2012 EX[DB] dated 19-6-12 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 HSA CHADHA EXPORTS
25,MADHUBANI KANTH ROAD
MORADABAD

2. Adv. / Consult

NONE

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-3
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
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 19.6.2012

Central Excise Appeal No.2666 to 2670 of 2005 with Cross-Objection No.195 of 2005

Arising out of the order in appeal No.64-69/CE/MRT-II/2005 dated 16.5.2005 passed by Commissioner, Customs & Central Excise , Meerut II.

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

C.C.& C.Ex., Meerut II ... Appellant

Vs.

M/s ~~HAS~~ HSA Chadha Exports .. Respondent

Present for the appellant : Shri N. Pathak, A.R.
Present for the respondent : None

FINAL Order No. A/729-733/2012-Ex(BR)

Per Justice Ajit Bharihoke (Oral):

The above quoted appeals are filed by Revenue against a common order of Commissioner (Appeals) No. 64-69/CE/MRT-II/2005 dated 16.5.2005 whereby the Commissioner (Appeals) accepting the appeals filed by respondents M/s HAS Chadha Exports set aside the order in original rejecting refund claim of the respondent and remanded the matter back to the adjudicating authority for reexamination of the refund claims of the respondent in the light of the observations made in the order.

2. Revenue being aggrieved of the impugned order of Commissioner (Appeals) have preferred these appeals on sole ground that as per Section 35A of the Central Excise Act, 1944, Commissioner (Appeals) have no power to remand the case back for de novo adjudication.

3. The respondent has contested the appeals by filing cross-objection in respect of the above referred appeals and taken a position that in view of the judgments of the Tribunal in the case of C.C.E., Raipur vs. Laxmi Tobacco Co. Ltd. - 2004 - TIOL - 1042 - CESTAT - Delhi; Commissioner of Customs, Ahmedabad vs. Nirma Ltd. - 2005 - TIOL - 385 - CESTAT - Mumbai; M/s Coats of India Ltd. vs. Commr., Kolkata - 2005 - TIOL - 671 - CESTAT - Kol. and Commr. of C.Ex., Kolkata II vs. Indian Aluminium - 2005 - TIOL - 695 - CESTAT - Kol., the Commissioner has the power to remand the case for fresh adjudication even after amendment of Section 35A of the Central Excise Act, 1944. As such, the impugned order remanding the case back for fresh adjudication cannot be faulted.

4. No one is present on behalf of the respondent. However, the respondents on 4.11.2011 had submitted an application dated 2.11.2011 claiming that their authorized representative is not in a position to appear before the Tribunal and prayed for decision on appeals as per grounds raised in the cross-objection.

5. Shri Nagesh Pathak, learned A.R. for Revenue fairly concedes that this is a fit case for remand. He, however, submits that Department has preferred this appeal only for the reason that after the amendment brought out in Section 35A of the Central Excise Act, 1944 by the Finance Act, 2001 the Commissioner (Appeals) has been divested of the power to remand the matter back to the adjudicating

authority for denovo adjudication. Ld. AR submits that prior to the amendment in Section 35A, there was specific mention of power to remand in the aforesaid section which has subsequently been deleted by way of amendment which clearly indicate the intention of the legislature to take away the power of the Commissioner (Appeals) to remand the matter back. Thus, ld. AR has strongly urged for setting aside of the impugned order.

6. In order to appreciate the contention of the ld. AR it would be useful to have a look on the amended Section 35A(3) of the Central Excise Act which deals with the power of the Commissioner (Appeals) and reads thus:-

> "**35A. Procedure in appeal.** —
>
> (3) The Commissioner (Appeals) shall, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against :

7. The wording of the section 35A(3) is exactly similar to the wording of Section 128(2) of the Customs Act, 1962 which deals with the power of the first appellate authority. The issue of interpretation of the aforesaid Section 128(2) in the context of the powers to remand came up for consideration of Supreme Court in the matter of **Union of India vs. Umesh Dhaimode – 1998 (98) ELT 584 (S.C.)** wherein interpreting the aforesaid provision the Supreme Court held that aforesaid provision vested the appellate authority with power to remand the matter back. The relevant observations of the Supreme Court are reproduced thus:-

> "2. As the order under appeal itself notes, the aforesaid provision vested the appellate authority with powers to pass such order as it deemed fit confirming, modifying or annulling the decision appealed against. An order of remand necessarily annuls the decision which is under appeal before the appellate authority. The appellate authority is also invested with the power to pass such order as it deems fit. Both

these portions of the aforesaid provision read together, necessarily imply that the appellate authority has the power to set aside the decision which is under appeal before it and to remand the matter to the authority below for fresh decision".

8. In view of the aforesaid position in law expounded by the Supreme Court we do not find merit in these appeals.

7. Appeals as well as Cross-Objection are disposed accordingly.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/