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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/2827/2009-EX[DB]
E/S/2909/2012-EX

Dated: **13/07/2012**

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

C.C.E. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

C.C.E. DELHI I (Appellant)

VS

SHRI VIKRAM DHAWAN, (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/811/2012-EX[DB]**, Stay Order No. **SO/1077/2012** dated **10/05/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
SHRI VIKRAM DHAWAN,
D-53, AVTAR ENCLAVE, PASCHIM
VIHAR,DELHI-110063.

2. Advocate(s) / Consultant(s):

3. C.D.R
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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. Gaurd 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: 10.07.2012

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. 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.	
2	Whether it should be released under Rule 27 of the 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?	

Excise Stay No. 2909 of 2009 and Excise Appeal No.2827 of 2009
(Arising out of order-in-Appeal No. 122-124/CE/DLH/2009 dated 04.08.2009 passed by the Commissioner (Appeals) Central Excise, Delhi-I).

CCE, Delhi-I Appellants

Vs.

Vikram Dhawan Respondent

Present Shri Nagesh Pathak, AR for the appellant.
None for the respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

STAY ORDER No 1077/2012-SM(DB)
FINAL Order No. A/ 811 /2012-EX(DB)

Per. Justice Ajit Bharihoke (Oral):

This appeal is directed against the impugned order-in-appeal of the Commissioner (Appeals), Central Excise, Delhi-I whereby he set aside the order-in-original passed by the Jt. Commissioner, Central Excise, Delhi and remanded the matter back for denovo adjudication on the ground that the Joint Commissioner, Central Excise has not followed the principles of natural justice inasmuch as he did not supply the unrelied upon documents seized during investigation despite of the request made by the respondent.

2. The revenue is aggrieved of the order of remand on two counts. Firstly, it is pleaded that after the amendment of Section 35A of the Central Excise Act brought about by amended by Finance Act, 2001, the Commissioner (Appeals) has been divested of power to remand the matter for denovo adjudication while hearing the appeal. Secondly, it is pleaded that otherwise also the order of remand is not sustainable in law for the reason that it was the respondent who have been avoiding to cooperate in the adjudication proceedings and he himself was responsible for not accepting unrelied upon documents. Thus, ld. Jt. CDR has urged us to accept the appeal and set aside the impugned order.

3. As regards the power of Commissioner (Appeals) to remand the matter back for denovo adjudication we may note that this issue came up for consideration of the Supreme Court in the matter of **UOI vs. Umesh Dhaimode 1998 (98) ELT 584 (SC)** wherein the Supreme Court had an occasion to interpret the provision relating to powers of the Commissioner (Appeals) under Section 228 of the Customs Act which provision is parimateria to the amended Section 35A of the Central Excise Act. In the aforesaid matter the Supreme Court held that though there is no specific power of remand given under Section 228 of the Customs Act to the Commissioner (Appeals), yet the power to remand the matter to the adjudicating authority is inbuilt in the said provision. The relevant observation of Supreme court is 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."

In view of the above finding of the Supreme Court we do not find merit in the plea of the revenue that the Commissioner (Appeals) after the amendment of Section 35A has no power to remand the case for denovo adjudication.

7. Regarding the second plea raised by the Department, we find that the Commissioner (Appeals) has remanded the matter back for denovo adjudication for the reason that the Department failed to supply to the respondent unrelied upon documents seized during investigation despite of request having been made in this regard. Relevant observation made in the impugned order are reproduced thus:-

"I find that it can be seen from the copies of the said acknowledgements that show cause notice has been delivered along with relied upon documents to the appellants but un-relied upon documents have not been supplied to the appellants despite their repeated requests which is in violation to the principles of natural justice and law laid down vide catena of judgements relied upon by the appellants and passed by the Hon'ble Supreme Court and followed by various Hon'ble High Supreme Court and followed by various Hon'ble High Courts and Tribunals. I find that Circular No. 42/88-CX.6 dated 24.5.98 reads as below:-

Subject: Handling of seized documents/ records- Instruction regarding.

Whenever any documents/ records are seized, immediate efforts should be made to segregate the documents which are proposed to be relied upon in framing/ establishing the charges, from the remaining documents/ records.

2. Once the show cause notice is issued to the party the documents/ records which have not been relied upon may be returned to the party under proper receipt.

3. The above measures would help substantially reduce the time taken by parties for inspection of documents.

Above instruction have also been reiterated by the CBEC vide Letter F. No. 207/09/2006-CX.6 dated 8.9.2006 which reads as below:-

It has been brought to the notice of the Board that the records seized in connection with offence cases are not being returned to the assessees in spite of repeated requests made by them. This not only causes undue hardship to the assessees, as they require such records for various statutory obligations, but it also unnecessarily occupies space in our offices.

2. In this regard, your attention is invited to the Board's Circular No. 42/88-CX, dated 24-5-1988 and No. 48/88-CX. 6, dated 10-6-1988. As per these circulars, the documents/records which are not relied upon in the Show Cause Notice are required to be returned under proper receipt to the persons from whom they are seized. I wish to reiterate compliance of these instructions. In fact, the Show Cause Notice itself may incorporate a clause that unrelied upon records may be collected by the concerned persons within 30 days of receipt of the Show Cause Notice. The designation and address of the officer responsible for returning the relied upon records should also be mentioned in the Show Cause Notice.

It can be seen from the above instructions that even un-relied documents are required to be returned within thirty days of the receipt of the show cause notice which has not been done by the department despite repeated requests of the appellants.

I find that Hon'ble Tribunal has followed the said judgement in number of cases including the judgements mentioned below and remanded the case to the original adjudicating authority to decide the case after supplying the un-relied upon documents to the assessee:

a) 2002 (149) ELT 369 (Tri. Mad/ Chennai)
b) 2008 (12) STR 180 (Tri. Bangalore)
c) 2008 (224) ELT 606 (Tri. Kol.)
d) 2008 (227) ELT 544 (Tri. Kol)
e) 2008 (230) ELT 518 (Tri. Kol)
f) 2008 (234) ELT 475 (Tri. Kol.)

In the instant case also, the appellants have shown their inability to put forth any defence at all before the adjudicating authority and this appellate authority, without the documents required by them including relied as well as un-relied upon and the adjudicating authority has proceeded to decide the case ex-parte and without supplying the un-relied documents to the appellants. In view of the Circulars issued by the CBEC and legal position settled by various Hon'ble Courts and Tribunal, I am left with no other alternative but to set aside the impugned order which had been passed in *violation to the principles of natural justice and direct the adjudicating authority to supply all the relied and un-relied upon documents requested under various letters written by them during the course of adjudication after taking dated acknowledgement on the list of documents itself and pass the order after affording opportunity to explain their case".*

11. We do not find any fault with the above approach adopted by the Commissioner (Appeals), therefore, in our considered view the impugned order remanding the matter for denovo adjudication after supply of copies of relevant documents to the respondent cannot be faulted.

12. Thus, appeal as well as stay application are dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant