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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Chennai

Decided On : Jul-08-2010

Judge : The Honourable Ms. Jyoti Balasundaram, Vice President

Appeal No. : C/S/149 - 150 of 2010 & C/201 - 202 of 2010

Appellant : Cc, Chennai

Respondent : M/S. Sms Distribution Pvt. Ltd. and Another

Advocate for Pet/Ap. : Shri T.H. Rao, SDR, for the appellant. Shri S. Krishnanadh, Adv., for the respondent.

Judgement :

After hearing both sides on the applications for stay of operation of the impugned order of the Commissioner (Appeals), I find that the appeals themselves can be disposed of at this stage and hence proceed to take up the appeals with the consent of both sides, after rejecting the stay applications of the Revenue. The direction given by the Commissioner (Appeals) vide impugned orders for remand of the case to the lower authority is challenged by the Revenue, on the ground that after amendment of the statutory provisions, the Commissioner (Appeals) no longer has the power of remand.

2. I find that this issue stands settled by the judgment of the Hon’ble Gujarat High Court in CCE, Ahmedabad Vs. Medico Labs - 2004 (173) ELT 117 (Guj.), holding that the Commissioner (Appeals) continues to have the power of remand even

after the amendment of Section 35A (3) of the Central Excise Act, 1944. The High Court's decision cited supra has been followed by the Tribunal in CCE, Pondicherry Vs. Neycer (I) Ltd. vide Final Order No. 1789 and 1790/09 dated 17.11.09. Following the ratio of the above, I uphold the impugned orders of remand and dismiss the appeals.

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