**(2010) 10 DEL CK 0128**

**In the Delhi High Court**

**Case No :** C.E.A.C. No. 20 of 2010 and CM No''s. 18496-18498 of 2010

Commissioner of Service Tax, Delhi — APPELLANT

Vs

World Vision — RESPONDENT

**Date of Decision :** 18-10-2010

**Acts Referred:**

Central Excises and Salt Act, 1944 — Section 35A(3)
Finance Act — Section 85(5)

**Citation :** (2011) 24 STR 650

**Hon'ble Judges :** Suresh Kait, J;A.K. Sikri, J

**Bench :** Division Bench

**Advocate :** R.K. Tiwari and Dr. Ashwani Bhardwaj, for the Appellant;

**Final Decision :** Dismissed

## Judgement

1. Admitted fact is that ex parte order was passed by the Adjudicating Authority. This order was challenged by the respondent by filing appeal before the Commissioner (Appeals) and the main ground of challenge was that no reasonable opportunity was given to the respondent to contest the matter. It was found from the record that no proper notice was served upon the respondent before passing the order-in-original by the Adjudicating Authority. After recording this finding the Commissioner (Appeal) Central Excise Delhi-110001 remitted the case back to the Adjudicating Authority to give opportunity to the respondent-assessee and pass fresh orders. The department filed appeal against the order of Commissioner (Appeals). The only ground raised before this Court as well was that the Commissioner (Appeals) had no authority and power to remit the case back to the Adjudicating Authority and the Commissioner (Appeals) should have decided the appeal on merits himself. This aspect is discussed in detail by the Customs, Excise & Service Tax Appellate accepting the provisions of sub-section (5) of Section 85 of the Finance Act with Section 35A(3) of the Excise Act. On the basis of which the CESTAT has concluded that in a case like this 1 On Appeal from 2010 (20) S.T.R. 49 . it could not be said that there was no power to remit

the case back to the Adjudicating Authority.

2. Once the finding is recorded that the order passed by the Adjudicating Authority was in violation of principle of natural justice, such an order would be nullity in law. In these circumstances, we find no reason to interfere with the impugned order [ 2010 (20) S.T.R. 49 ]. The respondent had no opportunity to even reply to the show cause notice and in the absence of any material before the Commissioner (Appeals), it was not possible for Commissioner (Appeals) to decide the case on merits. We are, therefore, of the opinion not to interfere with the impugned order, hence the appeal is dismissed.

3. All the pending applications are also disposed of.

 