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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/4841/2004-4848/2004 - EX[DB] & E/CO/72-73/05 Date 11/12/2008

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

To :
C.C.E. CHANDIGARH
PLOT NO 19, SEC 17-C, CHANDIGARH

C.C.E. CHANDIGARH Appellant
Vs
M/S MAJESTIC INDS. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order** No.913-920/08 – EX[DB] dated 02-12-08 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 MAJESTIC INDS. LTD.
   D-120, PHASE-V, FOCAL POINT, LUDHIANA
2. Adv. / Consult

NONE

3 C.D.R
~~4 JCDR~~.
5 Bar association. CESTAT. New Delhi
6 M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd.. 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagarava Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

~~M/S MAJESTIC INDS.~~
1~~20, PHASE-V, FOCAL POINT, LUDHIANA (PUNJAB)~~

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

E/4841 to 4848/04 with E/CO/72-73/05

[Arising out of Order-in-Appeal No.479-492/CE/CHD/04 dt.30.6.04 passed by the Commissioner(Appeals), Chandigarh)

CCE, Chandigarh — Appellant

Versus

M/s. Majestic Inds. Ltd. — Respondent

Appearance

Shri B.S.Suhag, Authorised Departmental Representative(DR) For appellant
None For respondent

Coram: Hon'ble Mr. D.N.PANDA, JUDICIAL MEMBER
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of decision: 24.11.08
FINAL Order No. 913 – 920 / 08 - EX

Per D.N.Panda:

Revenue has filed eight appeals i.e. Appeal case No.E/4841/04 to E/4848/04. Ld. DR appeared for Revenue. But none appeared for the respondents. Record revealed that the respondent in all these eight appeals is Majestic Inds. Ltd. Revenue submits that this respondent was also involved in Appeal case No.4727/04, 4586 to 4588/04, 4546/04 and 4690/04 which were listed at S.No.3 in the regular matter hearing of 11.11.08 and this respondent in those cases had benefited its buyer issuing fake invoices for fraudulent claim of Modvat for which the Respondent was penalized alongwith others. In the present set of 8 appeals, revenue's grievance is:

(1) That the Respondent has issued fake invoices and defrauded Revenue.

(2) The vehicles used as mode of transport of the impugned goods were found to be non-existant and fictitious.

(3) The mode of transport used for carrying impugned goods when not practically possible/feasible, there was no delivery of goods or transportation thereof as well reaching of such goods was proved to be false and an impossibility.

(4) Verification of records of the Respondent exhibited that the goods were not in existence but coloured to be delivered for fraudulent claim of Modvat credit.

(5) The respondent was not all in occupation of any premises to store the impugned goods and that made the entire practice of sale to be fraudulent.

2. Heard revenue at length and also we had occasion to observe the modality of deal of this respondent in the matters submitted by Revenue. It was further corroborated by failure to comply to notice of hearing by the Respondent. Notices had been issued fixing date of hearing on 4.7.08. But returned 'unserved' with the postal remark that no such person is available at the address. Today also none appeared for the respondent. We, therefore, proceed to dispose of the eight appeals exparte.

3. The respondent has faced penalties in terms of eight assessment orders stipulated in first page of the order-in-appeal. The amount of penalty ~~That~~ varies from Rs.14 lakhs to Rs.30,000/- as arranged in the table at that page. Ld. Assessing Authority has observed in para 4.3 of the order of adjudication that there was no evidence of transportation of the goods as well as receipt of the goods. Enquiry from transport authority revealed that the vehicle number mentioned by the respondent was fake. The transporters of the vehicle were found to be in non-existent and wherever they exist, they denied transport of the goods from the Respondent's premises to different places. Therefore, ld. assessing authority

came to the conclusion that there was no movement of goods at all. That created doubt in the mind of ld. assessing authority as to ~~non~~-existence of the goods with the respondent itself. In such circumstances, ld. authority came to conclusion that the entire transactions of the respondent was to benefit the buyers with fake invoices as a fraudulent practice. Entire observation of the ld. assessing authority was discarded by the ld. appellate authority unreasonably relying on previous order-in-appeal No.443-447/04 dt.18.6.04. That authority in that order held that inputs supplied by the supplier were received by the recipient and such receipt was entered into the statutory record. Also he held that such inputs were used in the final product and such final product had undergone duty liability. We surprise that the essential facts in the present set of appeals and material evidence relied by the adjudicating authority did not receive attention of the ld. appellate authority, who has gone wrong to adopt his order dt.18.6.04 for this set of appeals. Miscarriage of justice is therefore noticeable and injustice was done to revenue which is intolerable when the appellate order did not look into the matter in controversy at all.

4. We have gone through the ~~anxiety~~ orders of Tribunal in like cases of this set of appeals and the order passed in Excise Appeal No.2434/06 on 3.9.08 was gone through by us. We consider that the decision in that appeal should guide the learned appellate authority below who should deal the present eight appeals under touch stone of law, giving due regard also to the decision of the Tribunal in the appeals decided by order No.772-818/08 dt.22.9.08. It would be Proper on the part of ld. appellate authority to thoroughly examine the matter in controversy without strange issues being brought to record. He should also consider material evidence on record and granting reasonable opportunity to the respondent and on consideration of the totality

facts and circumstances of the case and also considering the aforesaid decision of the Tribunal reach to a proper conclusion and pass a speaking and reasoned order by end of March'09 issuing proper notice of hearing to the Respondent.

5. In the result, all the eight appeals are remanded to the Commissioner(Appeals), setting aside the impugned order. In view of our aforesaid decision , cross objection No.E/72 & 73/05 are disposed of accordingly.

Order dictated in the open Court.

(D.N.Panda)
Judicial Member

(Rakesh Kumar)
Member Technical

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