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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/4727 ,4546,4586-4588 & 4690/2004 Date 02/12/2008

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 ALLENGERS MEDICAL SYSTEMS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 898-903/2008- **EX[DB]** dated 27-11-08

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 ALLENGERS MEDICAL SYSTEMS LTD.
VILL.-BHANKARPUR, DERABASSI

M/S. HANSA TUBES PVT. LTD.
HAIBATPUR ROAD, DERABASSI,
DISTT. PATIALA (PB)

2. Adv. / Consult
MR.GAGAN KOHLI
394,SECTOR-30 A, CHANDIGARH.

3 C.D.R
~~4 J.C.D.R.~~
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), Thyagaraya 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
17. M/S. A.V. INDUSTRIES, NABHA (PUNJAB)
18. M/S. SINGH SYSTECH,
E-169, INDL. AREA, PHASE-VII, MOHALI
19. M/S. MICRO PRECISION, 325, INDL. AREA,
PHASE-IX, MOHALI
20. M/S. METAL PRESSING, D-143, INDL. AREA,
PHASE-VII, MOHALI

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II
Excise Appeal Nos. 4727, 4546, 4586-4588 and 4690 of 2004

[Arising out of the Order-in-Appeal No. 572/CE/CHD/2004 dated 30/07/2004 and 443-447/CE/CHD/2004 dated 18/06/04 both passed by The Commissioner (Appeals), Central Excise, Chandigarh.]

CCE, Chandigarh — Appellant
[Shri B.S. Suhag, Auth. Rep. (DR)]

Versus

1. M/s Allengers Medical Systems Ltd.]
2. M/s A.V. Industries]
3. M/s Singh Systech] Respondent
4. M/s Micro Precision]
5. M/s Metal Pressing]
6. M/s Hansa Tubes Pvt. Ltd.]

[Shri Gagan Kohli, Advocate]

CORAM : **Hon'ble Shri D.N. Panda, Judicial Member**
Hon'ble Shri Rakesh Kumar, Technical Member

DATE OF HEARING : 11/11/2008.

FINAL Order No. 898-903/08-EX Dated : ____________

Per. D.N. Panda :-

Learned DR submits that in view of the decision of this Tribunal in the case of **M/s Ranjeev Alloys Limited vs. CCE, Chandigarh** in final order No. 654/08-EX, the respondent should not have been given any relief by the learned authority below by the impugned order. He submits that one M/s Majestic Industries Limited situated at D-120, Focal Point, Phase-V, Ludhiana have sold 243 M.T. of HR/CR coils/sheets and 98 MT of Steel Scrap through fake modvatable invoices. There was no godown of the above dealer and the entire transactions were fake and evidence of transportation of goods proved to be fake. Therefore, the appellant should not have been favourably considered by the learned appellate authority.

2. The above averment of the learned DR was not controverted in reply by the Respondent in the course of hearing, leading any evidence. The respondent fairly agrees that categorical finding on the inspection resulting non-existence of the goods of the description stated above was proper, not in existence in the declared premises of M/s Majestic

Industries Ltd. Such contentions of both sides calls for rigorous scrutiny.

2. Heard both sides and perused the records.

3. It is fundamental principle that fraud nullifies even judgment and decrees. Two propositions emerge in this case. The first one is that whether the dealer M/s Majestic Industries Ltd. possessed the ~~questionable~~ goods in question, on the date of inspection i.e. 04/02/2000 when inspection was made by the Preventive Officers. Second, when the goods were not in existence for delivery, how ~~that was~~ the same were transferred to the buyer while mode of transport was questionable. When non-existence of the goods in the premises of the dealer was proved by panchnama that becomes basic evidence followed by other material facts of the case as well as evidence on record for decision. The learned appellate authority below who passed the impugned order has nowhere categorically spoken that these pertinent facts ~~whether~~ were examined or not. He has only proceeded on altogether different premises which we consider is not proper.

4. In view of our above observations and in view of the decision of the Tribunal cited by the learned DR as stated aforesaid, it should be proper to remand the matter back to learned appellate authority to examine entire issue extensively on the material available on the record to conclude whether there was physical existence of the ~~questionable~~ goods in question, on 04/02/2000 in the premises of M/s Majestic Industries Ltd. as well whether the modvatable documents used were fictitious or fraudulent and also whether transports were in existence and the Respondent carried out transportation. Learned Commissioner (Appeals) has also to examine whether there was actually movement of goods from the premises of the appellant or from the declared premises as claimed by the Respondent depending on the facts and circumstances of the case. Learned Commissioner shall be at liberty to decide the matter in accordance with law.

5. In the result, we remand the matter to the learned appellate Authority in the light of Tribunal's decision aforesaid for decision within a time frame of two months from the date receipt of order without any delay in view of aging of the matter. The respondent should not seek unnecessary

adjournments since they agree that they shall submit themselves for fresh examination of the issues involved before the learned appellate authority.

6. In respect of all other parties whose appeals were listed, both the parties agree that the order passed by us in appeal No. 4727 as aforesaid today shall equally apply to the appeal Nos. 4546, 4586-4588 and 4690 of 2004. In view of the consent of both sides, we have no hesitation to remand the matters back to the learned Commissioner (Appeals) for re-determination of the issues in the light of our observations in Appeal case No. 4727 of 2004 and the decision of the Tribunal as aforesaid. In the result, the appeals 4546/2004, 4586-4588/2004 and 4690/2004 are remanded setting aside the impugned orders.

(Dictated and pronounced in open court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK