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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. C/683 /2007-SM[BR]

Date 26/06/2008

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

To :
C.C.E. MEERUT II
OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI
ROAD, MEERUT (UP)
C.C.E. MEERUT II

Appellant
Vs
Respondent

M/S S.S.COLLECTION, GAJRAJ BHAWAN

I am directed to transmit herewith a certified copy of **Final order No**. 1006 /2008 –SM[BR] dated 22.5.2008 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S S.S.COLLECTION, GAJRAJ BHAWAN
   GAJRAJ BHAWAN, KATGHAR PACHPERA, MORADABAD
2. Adv. / Consult SHRI ANURAG RISHI ADV.
   60, VILVES HWARPURI, BEHIND SADAR THANA
   MEERUT CANTT, MEERUT[U.P]
3. S.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 Delhi -
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 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH NEW DELHI

Custom Appeal No.683 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.06-CUS/MRT-II/2007 dated 26.7.2007 of the Commissioner of Central Excise (Appeals), Meerut-II]

Date of Hearing/ Decision:22.5.2008

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporters may be allowed to see 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? :

No

CCE, Meerut-II ...Appellants

[Rep. by Shri A.K. Rastogi, DR]

Vs.

M/s. S.S. Collection ....Respondent

[Rep. by Shri Anurag Rishi, Advocate]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No..1006/08-SM(BR)/Dated:22.5.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that the Respondents filed a Shipping Bill on 27th June, 2006 for export of Art wares/Handicrafts of copper and other handicrafts of iron. The FOB value of consignment was shown in the Shipping Bill is Rs.12,03,920/- and Drawback was claimed for Rs.1,12,376/-. It has been alleged that the Respondents misdeclared the weight of the copper, which was short by 220 Kg. and the drawback involved was Rs.7,730/-. The Adjudicating Authority imposed penalty of Rs.95,730/- upon the Respondent equal to the value of shortage of the exported goods. The Respondent filed an appeal before the Commissioner (Appeals), which was rejected by the Order-in-Appeal dated 1.3.2007. Revenue also filed appeal before the Commissioner (Appeals) against the Adjudication Order for confiscation of the goods and imposition of redemption fine. The Commissioner (Appeals) by Order-in-Appeal dated 26th July, 2007 dismissed the appeal filed by the Revenue as not maintainable on the ground that the Commissioner (Appeals) already decided the Adjudication Order by Order-in-Appeal dated 1.3.2007. It has been observed by the Commissioner (Appeals) that since the appeal against Adjudication Order was decided by Order-in-Appeal dated 1.3.2007, it cannot be reopened at this level.

2. After hearing both the sides and on perusal of the records, I find that the Respondent filed appeal before the Commissioner (Appeals) against the imposition of penalty, which was rejected. The Revenue's appeal before the Commissioner (Appeals) on different ground inasmuch as for confiscation of goods and imposition of redemption fine. So, in this

case, the Doctrine of merger is not applicable. The Hon'ble Supreme Court in the case of Mauria Udyog Ltd. Vs. CCE, Delhi reported in 2002 (146) ELT 37 (SC) held as under:-

> "4. It is evident from the facts noticed above that the principle of merger has no applicability. The appeal of the Revenue was restricted to the reduction of the penalty amount by the Commissioner (Appeals). In the appeal of the appellant, the challenge was not only to the penalty but to the entire order including the order of the Commissioner confirming the demand and holding that the freight expenses of the appellant's factory to the buyers' factory are includible in the assessable value. The restricted question which was the subject matter of the appeal of the Revenue, under these circumstances, cannot result in the dismissal of appellant's appeal by application of principle of merger. The said principle on the factual situation herein has no applicability whatsoever. Mr. Rawal, the learned Additional Solicitor General very rightly did not support the order on the ground of the applicability of the principle of merger."

3. In view of the decision of the Hon'ble Supreme Court in the case of Mauria Udyog Ltd. (supra), I set aside the order of the Commissioner (Appeals) and direct to decide the matter on merits in accordance with law. The appeal is allowed by way of remand.

(Order dictated & pronounced in open court on 22.5.2008).

(P.K. Das)
Member (Judicial)

Ckp.