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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. E/2916/2006-SM[BR] Date 06/05/2008

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

To :
M/S MAX INDIA LTD
(MAXMET DIVISION) V.P.O.RAJLMAJRA,TEHSIL
BALACHOUR,DISTT-NAWANSHAHAR.

M/S MAX INDIA LTD Appellant
Vs
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH) Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 696 /2008 –SM[BR] dated **19.3.2008**

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

**Copy to :**
1. Respondent
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH)
C.R.BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH.
2. Adv. / Consult
MR.V.SWAMINATHAN
G-50, LAJPAT NAGAR-III, NEW DELHI-24
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, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. III

**Excise Appeal No.2916 of 2006-SM (BR)**

[Arising out of Order-in-Appeal No.133/CE/JAL/2006 dated 30.03.2006 passed by the Commissioner of Central Excise (Appeals), Jalandhar]

**Date of Hearing/ Decision:19.3.2008**

**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.

M/s.Max India Ltd. ...Appellants
[Rep. by Mr. V. Swaminathan, Advocate]

Vs.

CCE, Jalandhar ....Respondent
[Rep. by Mr.S.L. Meena, Authorized Representative (DR)]

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

Final Order No.696/08-SM(BR)/Dated:19.3.2008

**Per P.K. Das:**

Heard both sides and perused the records.

2. The appellant filed this appeal against the imposition of penalty of Rs.10,000/-.

3. The relevant facts of the case, in brief, are that the appellant availed credit of 50% of duty of Rs.7,956 on the capital goods and they returned back the said capital goods and reversed 50% of credit. But they have shown 100% amount of duty in their invoice. The Audit Authority pointed out that the appellant should reverse the balance of 50% of duty as mentioned in the invoice. Accordingly, the appellant reversed 50% of duty along with interest. After a period of two years, a show cause notice was issued to appropriate the amount of duty as deposited by them and to impose penalty. The adjudicating authority confirmed the demand of duty of Rs.7,956/- and appropriated the said amount as deposited by them. He dropped the penalty amount. Revenue filed the appeal against the adjudication order before the Commissioner (Appeals), whereby penalty of Rs.10,000/- was imposed under Rule 25 of the Central Excise Rules, 2002.

4. I find that the adjudicating authority dropped the penalty as the appellants deposited the duty with interest before issue of show cause notice. I noticed that the appellant availed credit of 50% of the duty and reversed the said credit, while returning the capital goods to the supplier. The payment of full amount of duty is recorded in their invoice and, therefore, there is no malafide on the part of the appellant. The finding of the Commissioner (Appeals) that duty was deposited by the appellant on being pointed out by the Department has no substance. In the facts and circumstances of the case, I do not find any reason to impose the penalty

under Rule 25 of the Central Excise Rules, 2002. So, the impugned order of Commissioner (Appeals) is set aside and the adjudication order is restored. Appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 19.3.2008.

( P.K. Das )
Member (Judicial)

Ckp.