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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/1203/2007 - SM   Date 02/04/2009

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

To :
M/S MASTER CHOICE,

1, MASTER BUILDING, SUNDER NAGAR, LUDHIANA

M/S MASTER CHOICE,   Appellant

Vs

C.C.E. CHANDIGARH   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 292 / 2009 –SM[BR] dated 27.3.2009

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. CHANDIGARH

C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult

NONE;---------------

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 - 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 LAWCRUX Advisors (P) Ltd, Law House,1-8,Sector - 10, Faridabad 121003 (Haryana)
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.1203/2007-SM(Br)

(Arising out of order in appeal No.99/CE/Appl/2006 dated 4.11.06 passed by the Commissioner of Central Excise (Appeals), Chandigarh)

M/s Master Choice — Appellant

Vs

CCE, Chandigarh — Respondent

Appeared for Appellant : None
Appeared for Respondent : Shri Sansar Chand, DR

Date of Hearing: 19.3.09

Coram: Hon'ble Mr.D.N. Panda, Judicial Member

Final Order No. 292 /2009 – SM (BR)

Per D.N. Panda:

None present for the appellant.

2. The order passed by the authorities below has resulted in finding that there was evasion of duty due to clandestine removal. Entire facts and circumstances of the case have been elaborated by the learned Commissioner (Appeals) at page 3 of the impugned order.

3. Learned DR submits that the appellant has deposited the duty amount which has been appropriated against the demand. Imposition of penalty in the present case is therefore, just and proper.

4. Heard the learned DR and perused the order passed by the learned Commissioner (Appeals). Learned Commissioner (Appeals) has recorded the fact that the appellant had argued before him that there was no allegation of fraud, collusion or any willful mis-statement or suppression of fact in the show cause notice but the adjudicating authority beyond the show cause notice, has held that deposit of duty by them during investigation stage itself, amounts to fraudulent clearance of goods on their part.

5. Learned DR agrees that the adjudicating authority cannot go beyond the show cause notice. The learned Commissioner has not disposed of the matter making a categorical observation with reference to show cause notice as to whether the show cause notice provided a foundation to establish presence of the essential ingredients of proviso to Section 11A of Central Excise Act, 1944. This is required to be stated following the Apex Court decision in the case of HMM Ltd reported in 1995 (76) ELT 496 and Metal Forgings Vs Union of India reported in 2002 (146) ELT 241 (SC). In view of the ratio laid down by Apex Court that the show cause notice is to state foundation of the essential ingredients, it is necessary to remit the matter to the Commissioner (Appeals) to re-examine the issue so far as the penalty is concerned, following the ratio laid down by the Apex Court. In the result, the matter is remanded to the learned Commissioner (Appeals)

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS.