

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/1687/2009 – SM [BR]

Date 15/04/2011

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

To :
M/S MAJESTIC AUTO LTD.
C-48, FOCAL POINT,
LUDHIANA.
M/S MAJESTIC AUTO LTD.

Appellant
Vs
Respondent

C.C.E. CHANDIGARH

I am directed to transmit herewith a certified copy of **Final order No. 186 / 2011 –SM[BR]** dated 22.3.2011
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

MR.J.P.KAUSHIK

A-14/3, SFS FLATS, SAKET, NEW DELHI-110017

3. C.D.R

4. Bar association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New

6. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -

7. Company Law Institute of India Pvt Ltd., No.2 (Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017

9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -

10. Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road,
Ahmedabad-15

11. LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)

12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road,
Vasant Kunj, New Delhi - 110070

13. Office Copy

14. Guard file


Assistant Registrar
(SM Appeal Branch)

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

COURT NO. III

Date of Hearing : 22.3.2011

Excise Appeal No. 1687 of 2009-SM

[Arising out of the Order-in-Appeal No. 82/CE/LDH/2009 dated 27.3.2009 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Coram:

Hon'ble Mr. Mathew John, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	NO
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	NO

M/s Majestic Auto Ltd.

Appellant

Vs.

CCE, Chandigarh

Respondent

Appearance:

Appeared for Appellant : Shri J.P. Kaushik, Advocate

Appeared for Respondent : Shri K.P. Singh, DR

CORAM: Hon'ble Mr. Mathew John, Member (Technical)

final Order No. 186/2011 SM dated.....

Per Mathew John:

The Appellant is a manufacturer of mopeds and motor vehicle parts. The Appellant purchased two machines as capital goods vide invoice No. 22 dated 01-12-2004 and invoice No. 26

dated 16-2-2005 from M/s Marshall Industries and availed Cenvat credit of duty paid on the machine and took credit on 3-12-2004 and 17-2-2005 respectively. After use of the machines for one year and more in the factory, the use of these machines was not found necessary in the factory. So they sold the old and used machines to M/s Highway, Industries Ltd, Focal Point Ludhiana in the year 2006 under invoice No. 9429 and 9430 both dated 28-02-2006 on payment of duty amounting to Rs. 551518/- in terms of Section 4 of the Central Excise Act. The buyer did not accept the machines and returned the same with remarks "not approved and returned" vide their invoice Nos. 2212 and 2213 dated 27-03-2006. The Appellant received the machines in their factory and took credit of the duties paid, i.e. 551518/- by them on 28-02-2006. There is no dispute about these transactions before the Tribunal in this proceeding.

2. Thereafter the prices were re-negotiated with M/s Highways Industries and the goods were sold to them at a lower price of Rs. 30,00,000/- as compared to Rs. 33,79,400/- at which the goods were originally sold. At that time they paid duty amounting to 4,89,600/- on the revised price. This transaction is in dispute. The revenue contests duty equal to the credit taken on the re-entry of the machines into the factory on 28-03-2006 should have been paid though the machines were sold, subsequently at a lower price.

3. A Show cause Notice was issued demanding the differential duty. After due proceedings a demand of Rs. 61698/- was confirmed along with interest applicable under section 11AB of the central Excise Act. A penalty of Rs. 10,000/ was also imposed under Rule 25 of the Cenvat Credit Rules.

4. The Appellant contested the order-in-original before the Commissioner (Appeal) but was unsuccessful. Aggrieved by the

Order of the Commissioner (Appeal), the Appellant is before this Tribunal.

5. The Adjudicating authority and the Commissioner (Appeal) relied on Rule 3 (5) of the Cenvat Credit Rules as it stood at the relevant time for taking the decision. This rule reads as under:

"When inputs or capital goods, on which CENVAT credit has been taken are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9."

6. The contention of the Appellant is that the above rule will apply only to inputs and capital goods removed "as such". Particularly in respect of capital goods the contention is that the provision will apply only when the machines are removed without its use in the factory. When the goods are used and then removed it is not removal of goods as such. So according to the Appellant they are not required to reverse any credit at all. Nevertheless they have reversed credit equal to duty payable on transaction value and such reversal is proper in terms of the decision of the Tribunal in **Cummins India Ltd. Vs. CCE Pune-III-2007** (81) RLT 857 (Cestat-Mum).

7. The department has not contested the duty amount paid on 28-02-2006 when the machines were sold initially. So there is no reason to consider that the department is contesting the principle laid down in the case of **Cummins India Ltd.** The thrust of the department's argument is that the machines were not used after its return into the factory on 28-03-2006. So the credit that was taken on the date of return should be reversed when the machines were finally sold at lower price later.

8. Considered the arguments on both sides.

9. The argument that ~~sale of~~ the final sale of the goods should be related to the re-entry of the machines on 28-03-2006 is not consistent with common sense. The re-entry of the machine on 28-03-2006 is to be related to the initial aborted sale made on 28-02-2006. The final disposal of the machine is to be related to the initial entries of these machines into the factory on 3-12-2004 and 17-02-2005. So the machines were cleared after use in the factory for more than one year and the principles laid down in the case of **Cummins India Pvt. Ltd.** will apply. Therefore the duty amount of rs. 4,89,600/- paid on the final sale of the goods for a value of Rs. 30,00,000/- is proper and the demands made in the impugned orders is not sustainable.

10. Therefore the Appeal of the party is allowed with consequent relief.

(Pronounced in open Court)

(~~Mathew~~ John)
Member (Technical)