TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/972 /2009 – SM[BR]** Date **19/05/2011**

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

To :
C.C.E. GHAZIABAD
C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR,
GHAZIABAD 201302
C.C.E. GHAZIABAD Appellant
Vs
M/S MAJESTIC AUTO LTD., Respondent

I am directed to transmit herewith a certified copy of **Final order No. 269 / 2011 –SM[BR]** Dated12.5.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S MAJESTIC AUTO LTD.,
10 TH K.M.STONE, G.T.ROAD,
VILL.ACCHEJA, DISTT. GAUTAM
BUDH NAGAR.

2. Adv. / Consult SHRI V.K. AGARWAL ADV.
M/S RESPONDENT:------------------

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions 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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. 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.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING : 12/05/2011.

Excise Appeal No. 972 of 2009 (SM)

[Arising out of the Order-in-Appeal No. 01-CE/GZB/2009 dated 14/01/2009 passed by The Commissioner (Appeals), Customs, Central Excise & Service Tax, Ghaziabad.]

For Approval and signature :
Hon'ble Mr. M.V. Ravindran, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	: NO
2.	Whether it would 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?	: Seen
4.	Whether order is to be circulated to the Department Authorities?	: Yes

CCE, Ghaziabad — Appellant

Versus

M/s Majestic Auto Ltd. — Respondent

Appearance

Shri A. Khanna, Authorized Representative (DR) – for the appellant.

Shri V.K. Agarwal, Advocate – for the Respondent.

CORAM: **Hon'ble Mr. M.V. Ravindran, Member (Judicial)**

Order sheet

Final order no. 269/2011 SM(BR)

Per. M.V. Ravindran :-

This appeal is filed by the Revenue against order-in-appeal No. 01-CE/GZB/2009 dated 14/01/2009.

2. Heard both sides and perused the records.

3. The issue involved in this case is that the revenue was of the opinion that the respondent has availed Cenvat credit on the capital goods used in the manufacturing of finished goods and subsequently sold the same. Show cause notice was issued demanding the reversal of such Cenvat credit. The respondent contested the show cause notice before Adjudicating Authority and submitted evidence to indicate that they had not availed the Cenvat credit of the duty paid of the capital goods which were procured and cleared subsequently. Adjudicating Authority after pursuing the evidence produced before him came to the conclusion that the

proceedings initiated by show cause notice needs to be dropped. Coming to such a conclusion he dropped the proceedings initiated by the show cause notice. Revenue preferred an appeal before the learned Commissioner (Appeals). Learned Commissioner (Appeals) vide impugned order has upheld the order-in-original. Revenue is in appeal before the Tribunal.

4. Learned SDR draws my attention to the grounds of appeal. The said grounds of appeal read as under :-

> "(i) Because the said order-in-appeal is totally silent on the grounds of appeal that availment/non-availment of Modvat/Cenvat credit can only be determined on the basis of duplicate copy of invoice and copies of RG23A Pt. I/Pt. II. Until and unless capital goods cleared by the party are not linked with their respective invoices/Gate Pass/Bill of Entry, it cannot be ascertained that any credit against the said Capital goods was taken or not. Moreover the invoices can through light at what time such cleared capital goods were received in the factory since the Commissioner (Appeals) has observed that at the time of receipt of such goods there were no provisions of availment of Cenvat credit on capital goods. In absence of appropriate copies of Invoices/

Bills of Entry and relevant RG-23A Pt.I/Pt. II of such capital goods, no inference can be drawn that no credit was taken against such goods.

(ii) Because, the Chartered Accountant's certificate cannot be treated as a proper document for confirming whether credit against the capital goods cleared by the party was availed or not. It can only be ascertained on the basis of duplicate copy of Gate Pass/Invoice and appropriate copy of Bill of Entry which were the only valid documents for availing credit under the CENVAT Rules during the relevant time.

(iii) Further, the Commissioner (Appeals) has also not properly answered the second ground of appeal with regard to credit of 50% in subsequent year. The Additional Commissioner had originally dropped the demand verifying the balance sheet of the particular years, whereas the credit of capital goods can be availed in any financial year, subsequent to the financial year in which the capital goods were received. Commissioner (Appeals) in her order-in-appeal observed that perusal of balance sheet produced by the party reveals that they claimed depreciation on two items mentioned at Sl. No. 5 & 6 of the Annexure 1 to the Invoice in question which goes to prove that they had not availed credit on the said capital goods. Though it is admitted that the party availing Cenvat credit were not liable to claim depreciation under the Income Tax law, yet on the basis of Balance sheet it cannot be said the party did not avail any credit on such capital goods simultaneously. Even it is also not possible to correlate the capital goods cleared by the party with the consolidated entries in the balance sheet without seeing the appropriate purchase documents/ inventory records.

(iv) Because every manufacturer of excisable goods availing facility of Cenvat credit on inputs and capital goods has been required to maintain the appropriate record under Rule 7 of the then Cenvat Rules for the receipt, disposal, consumption and inventory and therefore, it becomes obligatory upon him to produce the same to the satisfaction of the assessing officer to prove whether the credit has been availed by him or not."

5. Learned Counsel appearing for the respondent would submit that revenue has not submitted any evidence to indicate that appellant has availed Cenvat credit of the duty paid on such capital goods. He reiterates the findings of both the lower authorities.

6. On careful consideration of submissions made by both sides and perusal of the records, I find from the concurrent

findings of the lower authorities, that the appellant was able to demonstrate before them that they have not availed the Cenvat credit of the duty paid on capital goods. From the reproduced grounds of appeal (in para 4) of the department, it is seen that the department is seeking the respondent to prove the negative, which is incorrect proposition of law. The revenue has not been able to produce any evidence regarding the availment of Cenvat credit by the respondent on the said capital goods.

7. Accordingly, in view of the concurrent findings, to my mind, the lower authorities were correct dropping the proceedings initiated by the show cause notice. In view of foregoing, I hold that the impugned order is correct and does not require any interference. The appeal filed by the revenue devoid and is rejected.

(Dictated and pronounced in open court)

(M.V. Ravindran)
Member (Judicial)

PK