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/2178/2006 – SM[BR]** **Date 28/11/2011**

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

To :
**M/S MAGANUM COMPONENTS PVT LTD**

**1/5, KHANDSA ROAD, GURGAON**

**M/S MAGANUM COMPONENTS PVT LTD** Appellant

Vs

**C.C.E. CHANDIGARH** Respondent

I am directed to transmit herewith a certified copy of **Final order No. 802 / 2011-SM[BR]** dated 8.11.2011 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.R.S.TANDON**
B-39, SFS, SHEIKH SARAI, PHASE-I, 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 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. III**
**Excise Appeal No. 2178 of 2006 (SM)**

[Arising out of the Order-in-Appeal No. 126/GRM/GGN/ 2006 dated 19/04/2006 passed by The Commissioner of Central Excise (Appeals), Delhi – III, Gurgaon.]

For Approval and signature :
**Hon'ble Shri Rakesh Kumar, Member (Technical)**

| | | |
|---|---|---|
| 1. | Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | : |
| 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? | : |
| 4. | Whether order is to be circulated to the Department Authorities? | : |

M/s Maganum Components Pvt. Ltd. Appellant

Versus

CCE, Delhi – III, Gurgaon Respondent

**Appearance**

None – for the appellant.

Shri R.K. Gupta, Authorized Representative (DR) – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

**DATE OF HEARING : 08/11/2011.**

Final Order No. 802/2011 SM (BR) Dated : ____________

**Per. Rakesh Kumar** :-

In this case the appellant were required to pay differential duty on account of upward revision of price in respect of the goods earlier supplied to their customers. Though the appellant had issued the supplementary invoices showing the payment of duty but the duty had actually not been paid. Subsequently when it was detected, the duty amounting to Rs. 1,61,407/- was paid. It is on this ground that the Jurisdictional Assistant Commissioner vide order-in-original dated 31/10/05, besides confirming the duty demand alongwith interest also imposed penalty of equal amount on them under Section 11AC. On appeal to Commissioner (Appeals), the order-in-original was upheld. However, when this matter came before the Tribunal, the Tribunal vide final order No. 221/2008 – SM dated 16/1/08, reduced the penalty to Rs. 40,000/- following the judgment of Hon'ble Delhi High

Court in the case of **CCE vs. Malbro Appliances Pvt. Ltd.** reported in **2007 (208) E.L.T. 503.** Against this order of the Tribunal, the Department filed an appeal before Hon'ble Punjab & Haryana High Court, which was disposed of by the Hon'ble High Court vide order dated 11/10/10, by which the Hon'ble High Court set aside the Tribunal's order and remanded the matter for decision in the light of Hon'ble Supreme Court in the cases of **Union of India vs. Dharamendra Textile Processors** reported in **2008 (231) E.L.T. 3 (S.C.)** which had been reiterated in the case of **Union of India vs. Rajasthan Spinning & Weaving Mills** reported in **2009 (13) SCC 448**, wherein it has been held that if there is mens-rea, penalty equal to the duty demand under Section 11AC of the Act is mandatory and there is no discretion to reduce the same. Accordingly, the appeal has been listed for denovo decision.

2. Today, when this matter was listed for hearing none representing the appellant appeared though a notice for hearing had been sent to them. In view of this, so far as the appellant is concerned, the matter is being decided ex-parte.

3. Heard the learned Departmental Representative, Shri R.K. Gupta, who pleaded that in view of the judgment of the Apex Court on this issue, as mentioned in the judgment of Hon'ble Punjab & Haryana High Court, the Tribunal has no discretion to reduce the penalty under Section 11AC is not correct.

3. The only issue involved in this case as to whether when the allegation of mens-rea has been upheld, the Adjudicating Authority or Appellate Authority has discretion to impose penalty lower than the mandatory penalty equal to the duty demand confirmed, as prescribed under Section 11AC. This issue stands decided against the appellant by the Apex Court in the case of **Union of India vs. Dharamendra Textile Processes** (supra) and **Union of India vs. Rajasthan Spinning and Weaving Mills** (supra). In view of this, the order of CCE (appeals), impugned in this case is upheld in toto. The appeal is dismissed.

(Dictated and pronounced in open court.)

**(Rakesh Kumar)**
**Member (Technical)**

PK