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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/1156/2005 - EX[DB] Date 15/03/2011

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

To :
C.C.E.CHANDIGARH

N.C.R.BUILDING I.P.ESTATE NEW DELHI

110002

C.C.E.CHANDIGARH Appellant

Vs

M/S MAJESTIC INDUSTRIES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.292 2011 EX[DB]** dated 24-2-11

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

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S MAJESTIC INDUSTRIES LTD.
SCO 216 IRON. MARKET SECTOR-
29D,CHANDIGARH

2. Adv. / Consult SH. SHARAT KUMAR, ADV,
CHAMBER NO. B-37,
TIS HAZARI COURTS, DELHI

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
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. 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 - 110005
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 (Haryana)
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
15. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Court No. I

Date of Hearing/Decision: 24.02.2011

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
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.	Yes
2	Whether it should 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 Departmental authorities?	Yes

Excise Appeal No. 1156 of 2005

[Arising out of order in appeal No. 852/CE/CHD/04 dated 31.12.2004 passed by the Commissioner (Appeals) Central Excise, Chandigarh].

CCE, Chandigarh — Appellants
[Rep. by Shri Nitin Anand, DR]

Vs.

M/s Majestic Industries Limited — Respondent
[Rep. by Shri Sharad Kumar, Advocate]

Coram: **Hon'ble Sh. Justice R.M.S. Khandeparkar, President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

FINAL ORAL ORDER NO. 292/2011-EX

Per: Shri Justice R.M.S. Khandeparkar:

Heard the DR for the appellant and learned Advocate for the respondents.

2. The appeal arises from order dated 31.12.2004 passed by the Commissioner (Appeals), Chandigarh. By the impugned order, the Commissioner (Appeals) has reduced the penalty against the respondents to Rs. 5,000/- from the penalty of Rs. 15 lakh which was imposed by the Joint Commissioner in its adjudication order dated 05.10.2004.

3. Undisputedly, by the order dated 05.10.2004, the adjudicating authority had disallowed the modvat credit to the manufacturers M/s Jagan Tubes Limited, Derabassi and had ordered recovery of the said amount alongwith interest besides imposing equal amount of penalty. While passing the said order, penalty was imposed against the respondents herein as they were dealers who were alleged to have issued the invoices without actual supply of goods. Undisputedly, the order passed by the Commissioner (Appeals) in an appeal against the order of the adjudicating authority at the instance of the manufacturer had been set aside by this Tribunal under Final order No. 328/2010-Ex. dated 06.05.2010 and the matter was remanded to the Commissioner (Appeals) to decide the matter afresh. Being so, unless the main matter relating to the manufacturer is decided in the present case, it is too premature to decide this appeal. Besides, it may influence the decision to be arrived at by the Commissioner (Appeals) on remand, and may also lead to have two contrary decisions in relation to the same subject matter. In such circumstances, therefore, it would be appropriate to set aside the

impugned order and to remand the same to the Commissioner (Appeals) for fresh decision in the matter to be decided alongwith the appeal remanded by the Tribunal under Final order No. 328/2010-Ex dated 06.05.2010.

4. In the circumstances, therefore, without expressing any view on the merits of the case, the appeal is allowed. The impugned order is set aside and matter is remanded to the Commissioner (Appeals) to decide as stated above.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

Pant