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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/422 /2005 - EX[DB] , E/ROA/97/2011-EX   Date **23/02/2012**

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

To :
MAJESTIC METALIKS LTD.
OLD KALKA ROAD VILLAGE BHANKARPUR,
DERABASSI, DIST PATIALA PUNJAB
140507

MAJESTIC METALIKS LTD. Appellant

Vs

C.C.E. CHANDIGARH **MISC ORDER NO. 154/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/204/ 2012 EX[DB]** dated 17-2-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise 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.A.S.GILL
3355/SEC-21, CHANDIGARH

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-3
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 - 110005
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
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

E/ROA No.97/2011 in E/Appeal No.422/2005

(Arising out of order in original No.46/04 dated 20.3.04 passed by the Commissioner of Central Excise, Chandigarh)

Date of Hearing: 8.2.2012

For Approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member Judicial
Hon'ble Mr.Mathew John, Technical Member

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?	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?	Yes

M/s Majestic Metaliks Ltd — Appellants

Vs

CCE, Chandigarh — Respondent

Appeared for the Appellant: Shri A.S. Gill, Advocate
Appeared for the Respondent: Shri S.K. Panda ,Jt. CDR

Coram: **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical)

MISC. ORDER No. 154/2012-EX(BR)
FINAL ORDER No. A/204/2012-EX(BR)

Per Archana Wadhwa:

The prayer in the application is to restore the appeal dismissed vide Final order No. 627/11 dated 21.7.2011. It stand explained that the appellant reached late in the Tribunal from Chandigarh and as such, could not cause appearance when the matter was called.

2. In view of the above explanation, we recall the order of dismissal and restore the appeal to its original number. As a short issue is involved, we proceed to decide the appeal itself with the consent of both the sides.

3. Duty stands confirmed against the appellant by denying the benefit of modvat credit on the allegation and findings that they have received the invoice, without actually supply of the inputs. The supplier in this case is M/s Magestic Industries Ltd. We find that identical disputes were raised in respect of other buyers from M/s Magestic Industries. Proceedings were initiated against all such buyers on the allegation which resulted in passing of orders against them. The identical orders passed by the Commissioner were the subject matter of appeal before the Tribunal and vide final order No. 772-818/08 dated 22.9.08, the matter was remanded by observing as under:-

"We find that the Tribunal in the case of M/s Rajeev Alloys Ltd (supra) held that onus initially lies on the department to show that inputs are not received in the factory of production and credit has been wrongly taken but having established that the vehicle, in question, were incapable of transporting large quantity mentioned in the invoices, the onus shifts to the assesse to prove that goods were duly received by them and used in the manufacture of excisable goods. In view of the above decision, we find that as the initial burden that goods had not been received by the appellant has been discharged by the revenue, therefore, the onus is on the appellant to prove that the duty paid goods were actually received in the factory and used in the

excisable goods. In these circumstances, the impugned orders are set aside and the matter is remanded to the adjudicating authority to decide afresh in view of the decision of the Tribunal in the case of M/s Rajeev Alloys (supra). The appeals are disposed of by way of remand.

4. In as much as all identical matters stand remanded, we set aside the impugned order and remand the matters to the original adjudicating authority for fresh consideration in terms of the observations made by the Tribunal in the above referred decision. It is also seen that the impugned order stand passed by the Commissioner in absence of written submissions by the appellant, which were not filed in spite of repeated direction by the Commissioner. Similarly a number of hearings were fixed, the appellants failed to attend the same. As we have already remanded the matter, we direct the appellant to file written submisisns within a period of one month from the date of receipt of the present order and thereafter to attend the hearing as and when fixed by the adjudicating authority without seeking any adjournment.

5. ROA and appeal get disposed of in the above manner.

(Order dictated and pronounced in the open Court.)

(ARCHANA WADHWA)
Judicial Member

(MATHEW JOHN)
Technical Member

MPS*