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REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
EXCISE APPEAL BRANCH

Dated: **01/11/2012**

To

1. Appellant as per address in table below
2. Respondent as per address in table below

Final Order No. **A/1288-1289/2012-EX[DB]** dated **18/10/2012**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

S.No	Application	Appeal	Name and Address of Appellant	Name and Address of Respondent
1.		E/2144/2008 E/2468/2009	**MAGNA CORE.,** E-96, PHASE-IV, FOACAL POINT, LUDHAIANA.	**C.C.E. LUDHIANA** Central Excise House, 'F' Block, rishi Nagar, Ludhiana 141001 (Punjab) (VICE-VERSA)

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Copy To
1. Advocate(s) / Consultant(s):

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2. C.D.R 3. Office Copy 4. Guard File

5. Bar Association, CESTAT, Delhi **6.** Director Publications, Customs, Excise. I.P. Estate, Delhi

7. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

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

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, Satellite Road, Ahmedabad-15

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

12. TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

Assistant Registrar
EXCISE 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

<u>COURT NO. I</u>

<u>DATE OF HEARING/DECISION : 18/10/2012.</u>

Excise Appeal No. 2144 of 2008 and 2468 of 2009

[Arising out of the Order-in-Original No. 20/Ldh/2008 dated 14/07/2008 passed by The Commissioner, Central Excise, Ludhiana and Order-in-Appeal No. 106/CE/LDH/2009 dated 02/06/2009 passed by The Commissioner (Appeals), Central Excise, Chandigarh.]

Hon'ble Shri Justice Ajit Bharihoke, 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? :

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 Magna Core — Appellant

Versus

CCE, Ludhiana — Respondent

and vice-versa

<u>Appearance</u>

Shri J.P. Kaushik, Advocate – for the Appellant.

Shri Sanjay Jain, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Oral Order No. A/1288-1289/2012-Ex(BR)

Per. Shri Rakesh Kumar :-

Te facts giving rise to this appeal are, in brief, as under.

1.1 The appellant M/s Magna Core is a job worker for M/s Majestic Auto Ltd. M/s Majestic Auto Ltd. is a manufacture of motor vehicle parts. For manufacture of Pipe Diffuser Assembly, an auto part, the Majestic Auto sent Pipe Diffuser sub-assembly, Catalytic Converter, Pipe End, Cap End and Pipe Outer to the appellant and the Appellant after manufacture of Pipe Diffuser Assembly, returned the same to M/s Majestic Auto Ltd. M/s Majestic Auto were availing Cenvat credit in respect of the components sent by them to the appellant who were availing exemption under Notification No. 214/1986-CE dated 25th March 1986 in respect of the Pipe Diffuser Assembly cleared to M/s Majestic Auto Ltd. The Notification No. 214/1986-CE applicable to a job worker is subject to following three conditions, which are reproduced below :-

> "(i) the supplier of the raw materials or semi-finished goods avails of the credit of duty laid on inputs under Rule 57A of the said Rules, and gives an undertaking to the Assistant Collector of Central Excise having jurisdiction over the factory of the job worker that the said goods will be used in or in relation to the manufacture of the final products ;
>
> (ii) the said supplier produces evidence that the said goods have been so used ; and

(iii) the said supplier undertakes the responsibilities of discharging the liabilities in respect of Central Excise duty leviable on the finished products".

1.2 The department is of the view that since these conditions have not been followed and since the exemption Notification No. 214/1986-CE is subject to these conditions only, the appellant would not be eligible for benefit of this exemption. On this basis, the department issued two show cause notices dated 6/12/2007 and 1/4/2008 raising demand of Rs. 50,39,430/- and Rs. 1,95,787/- respectively alongwith interest. The notices also proposed to impose penalty on the appellant. Notice dated 6/12/2007 was adjudicated by the Commissioner vide order dated 14/7/08 whereby he confirmed the demand raised by this show cause notice against the appellant alongwith interest and imposed equal amount of penalty as the notice dated 1/4/2008 was adjudicated by the Assistant Commissioner who confirmed the demand alongwith interest and penalty, however, the Commissioner (Appeals) after following the Notification No. 214/1986-CE set aside the order-in-original as well as the demand.

1.3 Feeling aggrieved by the order of the Commissioner confirming demand of Rs. 50,39,430/- alongwith interest. The appellant preferred appeal No. E/2144 of 2008 and the Revenue being aggrieved of the order of Commissioner (Appeals) setting aside the demand confirmed vide order-in-original, preferred appeal No. E/2468 of 2009. Since the issue involved in both the appeals same, the same were heard together.

2. Learned Shri J.P. Kaushik, Advocate while assailing the impugned order has contended that the Commissioner (Adjudication) has failed to appreciate that in terms of Rule 4 (5) (a) of Cenvat Credit Rules, 2004, that in cases where raw material or semi-finished goods are sent by the principal manufacturer to a job worker for finishing processing, the liability to pay excise duty is of the principal manufacturer and not of the job worker and this is irrespective of Notification No. 214/1986-CE dated 25th March 1986. Learned Counsel has thus urged that the confirmation of duty demand against the appellant who admittedly is the job worker is not sustainable. In support of his contention, he has relied upon the judgment of the Hon'ble Supreme Court in the matter of **CCE vs. M. Tex & D.K. Processors (P) Ltd.** reported in **2002 (146) E.L.T. A309 (S.C.)** and Board's Circular No. 306/22/1997-CX dated 20th March 1997. He has also relied upon the judgment of Hon'ble Kerala High Court in the matter of **ITEL Industries Ltd. vs. Asstt. Commissioner of Central Excise** reported in **2012 (275) E.L.T. 145 (Ker.)** and **Shree Rayalaseema Dutch Kassenbouw Ltd. vs. CCE, Tirupathi** reported in **2006 (76) R.L.T. 464 (CESTAT – Ban.)**.

3. Shri Sanjay Jain, learned DR, on the contrary, has argued in support of the impugned order. He has contended that Commissioner (Adjudication) has rightly confirmed the demand in

view of Notification No. 214/1986-CE dated 25th March 1986. Learned DR has further submitted that the judgments relied upon by the appellant as also the Board's Circular are not applicable to the facts of this case, particularly when the appellant had failed to follow the procedural conditions prescribed in para 2 of above referred Notification. Thus, he has urged us to dismiss the appeal filed by the appellant and allow the appeal filed by the Revenue.

4. The point for determination in these appeals is whether or not a job worker who processes the raw material or semi-finished goods on behalf of the principal manufacturer who has taken Cenvat credit on raw material supplied, would be liable to pay excise duty on the job work amounting to manufacture by him or the liability to pay excise duty would be of the principal manufacturer.

5. Both the parties agree that the outcome of these appeals would be impacted by the fact as to whether or not the principal manufacturer M/s Majestic Auto Ltd has paid excise duty on the final product manufactured by using the product manufactured by the job worker. They also agree that this aspect has not been taken into account in either of the impugned orders. As such, the learned Counsel for the appellant and learned DR for the respondent have pleaded that both the orders be set aside and the matters be remanded back to the concerned authorities to decide the matters denovo after taking into account the facts as to whether or not excise duty liability has been discharged by the principal manufacturer M/s Majestic Auto.

6. In view of the above in respect of appeal No. E/2144 of 2008, the matter is remanded back to Commissioner for denovo decision and in respect of appeal No. E/2468 of 2009 the matter is remanded back to the Commissioner (Appeals) for denovo decision with the direction to ascertain as to whether M/s Majestic Auto Ltd. had paid duty on the finished product manufactured by using the material received there the appellant. Respective Commissioners are requested to dispose of these matters within six months after giving opportunity being heard to both the parties.

(Dictated and pronounced in the open court.)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

PK