FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 10/03/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70262-70263/2017-SM[BR] dated 06/03/2017

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.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/235/2009	C.C.E, KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
2	E/236/2009	C.C.E, KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
		Name and Address of Respondent
3		SHRI DINESH KUMAR JOHRI, PARTNER OF M/S AJANTA GLASS WORKS , S.N.ROAD, FIROZABAD.,,
4		AJANTA GLASS WORKS, S.N.ROAD, FIROZABAD.,,

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

**BIPIN GARG & CO.
ADVOCATES(ALLD)
102, MAHALAXMI ENCLAVE
(ADJ. INCOME TAX OFFICE),
STANLEY ROAD, CIVIL LINES,
ALLAHABAD (U.P.)-211001**

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise. I.P. Estate, Delhi

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

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

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

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, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/235 & 236/2009-EX[SM]

(Arising out of Order-in-Appeal No. 367-368-CE/APPL/KNP/2008 dated 20/10/200 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

1.	Whether Press Reporter 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?	Yes
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

Commissioner of Central Excise, Kanpur **Appellant**

Vs.

M/s Ajanta Glass Works, Shri Dinesh Kumar Johri, Partner of M/s Ajanta Glass Works **Respondent**

Appearance:

Shri Pawan Kumar Singh, Superintendent, (AR). for Appellant
Ms. Stuti Saggi, Adcocate. for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing & Date of Decision: 09/12/2016

FINAL ORDER NO. 70262 - 70265/2017

सीमा शुल्क उत्पाद शुल्क एवं सेवा कर अपीलीय अधिकरण
CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL
सत्यमेव जयते

Per: Anil Choudhary

The issue in this appeal by Revenue is whether the ld. Commissioner (Appeals) have rightly reduced the demand, confirmed on account of clandestine removal and also justified in reducing the penalty imposed on the respondent partner, Dinesh Kumar Johary.

2. The brief facts of case are that as per the Show Cause Notice, dated 23/08/2007, the respondent-assessee a manufacturer of bangles, branded auto headlamp glasses & glass shells etc., was availing SSI Exemption and was registered with the Central Excise Department. The glass shells of headlamp/auto headlamps were classifiable under Sub-heading No. 7011.90 of the First Schedule to Central Excise Tariff Act, 1985, which are chargeable to appropriate duty of excise. Revenue inspected the premises of the respondent-assessee on 11/02/2005 and found that the unit was engaged in manufacture of branded auto headlamp glasses of other parties in the names of Lumax, Linax, Autopol, K.K. Max etc. The production activity was not going on. There was a stock of branded/unbranded headlamp glasses in the factory. In the physical stock taking of branded headlamp glasses were found to be 7409 dozen and 298 dozen of branded headlamp glasses as per entered in RG-1 register. Further, in the course of search, at premises of M/s Max International, on the same date, located at Azadpur Delhi, some documents and one CPU were seized. Later on,

after scanning of CPU, was found to contain details of purchases of auto headlamp glasses from the respondent-assessee and others. A printout thereof was taken wherein it appeared that purchases from respondent M/s AGW Rs.8,75,154/- for the period from 01/06/2003 to 30/06/2003 & Rs.1,27,380/- for the period from 17/01/2004 to 09/02/2004. On scrutiny of sale books for the financial year 2004-05, seized from respondent-assessee, M/s AGW, it was noticed that they had cleared branded headlamp glasses total valued of Rs.9,30,997/- to the buyers, namely, M/s Jaisal Auto Lens, Firozabad, & M/s Max International, Azadpur, New Delhi, without payment of Central Excise duty for the period from April, 2004 to November, 2004 (RUD-2). Further, statement of the partner, Dinesh Kumar Johary, was recorded on 14/02/2005, wherein he stated that other than bangles, laboratory glass wares, they were also manufacturing Auto Headlamp Glass, also clearing both branded and unbranded glass shells. That on an average they supplied 20 to 25 thousand branded headlamp glasses in a month. Further, stating that the Shri Daljit Singh of M/s Jaisal Auto Lens, Firozabad was their major purchaser of branded headlamp glasses. They have also supplied branded headlamp glasses of Lumax, Topex, Ashoka, D.K. Max, Jagan and Autopal brands to M/s Jaisal Auto Lens, that the Central Excise duty was not paid on the branded headlamp glasses manufactured by M/s AGW and cleared to M/s Jaisal Auto Lens, Firozabad & M/s Max International, New Delhi as per sale book register (2004-05). They sold branded headlamp glasses as unbranded headlamp glasses without payment of duty and he was ready to deposit the duty on all such clearance of branded headlamp glasses sold by them as unbranded headlamp glasses. In his further statement, dated 12/07/2006, the said partner, Shri Dinesh Kumar Johary, further stated that they have sold approximately of 6,25,000 pieces of headlamp glasses valued at Rs.19,06,250/- from January, 2003 to November, 2004 to M/s Jaisal Auto Lens, Firozabad & M/s Max International, New Delhi. He further stated that they cleared unbranded headlamp glasses without raising any bill. Further, respondent - M/s AGW, deposited voluntarily duty of Rs.1,50,000/- vide TR-6 Challan No. 01/AGW/05-06 dated 15/06/2005 & further deposited Rs.1,61,100/- after sometime. The other partner of the respondent firm, M/s AGW, Shri Girish Kumar Maheshwari, also admitted and affirmed the statement of his partner, Dinesh Kumar Johary, and also stated that the firm AGW has closed manufacturing activity since November, 2004. It also appeared to Revenue that the purchasers of glass shells from the respondent - M/s AGW, M/s Jaisal Auto Lens, Firozabad & M/s Max International, New Delhi, used to purchase branded and unbranded auto lamp glass shells both with and without bills by way of trade. It was, further, stated in the Show Cause

Notice that the balance amount of Rs.1,61,100/- was deposited vide the challan dated 31/07/2006, and accordingly it appeared to Revenue that the appellant have violated the provisions of the Act & the Rules by clearing branded auto headlamp glass shells and accordingly proposed to confirm the duty of Rs.3,11,100/- calculated on the admitted amount of clearance of glass shells valued at Rs.19,06,250/- for the period from January 2003 to November 2004, with further proposal to appropriate from the tax already paid with interest and further penalty was proposed under Section 11AC of Central Excise Act, 1944 & penalty under Rule 26 of Central Excise Rules, 2002, was also proposed on the partner, Shri Dinesh Kumar Johary and their buyers, namely, M/s Jaisal Auto Lens, Firozabad & M/s Max International, New Delhi. The Show Cause Notice was adjudicated on contest and the proposed demand was confirmed and appropriated and further penalty was imposed of equal amount under Section 11AC of the Central Excise Act, 1944 on the respondent firm AGW. Further, penalty of Rs.50,000/- was imposed on the partner, Shri Dinesh Kumar Johary. Further, penalty of Rs.50,000/- was imposed on M/s Jaisal Auto Lens & M/s Max International each under Rule 26 of Central Excise Rules, 2002. Being aggrieved, the respondent - M/s AGW, preferred appeal before ld. Commissioner (Appeals) who vide the impugned order taking notice that the respondents have retracted their statements and the whole case of Revenue is based on the statements, save and except the clearance of Rs.9,30,997/- for the period from April 2004 November, 2004, which is supported by the sales records of the respondent-assessee, allowed the appeal in part by reducing the demand to Rs.1,51,99/- on the clearance of branded goods valued at Rs. 9,30,997/- and was further pleased to reduce the penalty under section 11AC of Central Excise Act, 1944 to the amount of duty being Rs.1,51,99/- & was further pleased to reduce the penalty on the respondent's partner - Shri Dinesh Kumar Johary, Rs.50,000/-.

3. Being aggrieved the Revenue is in appeal both for the reduction of the demand and the penalty on the ground that there was clear cut admission by both the partners on different dates. Further urging that Shri Dinesh Kumar Johary, the said partner never retracted. Further urged that the Commissioner (Appeals) have erred in observing that higher value based on the statement of the partner is not acceptable hence there is no corroborative evidence.

4. Heard both the parties.

5. Having considered the rival contentions, I find that the partner of the appellant have on different dates admitted clearance of branded glass shells of auto headlamp without payment of duty firstly on 14/02/2005, secondly on 12/07/2006 wherein he calculated the proximate quantity of clearance valued at Rs.19,06,250/- for the period from

January, 2003 to November, 2004 and prior to that respondent-assessee had deposited an amount of Rs.1,50,000/- vide challan dated 15/06/2005. Further, Shri Dinesh Kumar Johary disagreed with the statement of the Shri Daljit Singh, propritor of M/s Jaisal Auto Lens, further emphasizing that their unit – AGW had closed their production activity with effect from 11/11/2004, further reiterated that they have approximately sold 6,25,000 pieces of branded auto headlamp glasses valued at Rs.19,06,250/- on which Excise duty including cess comes to Rs. 3,11,100/-. Thereafter, on the same day the statement of the other partner, Girish Kumar Maheshwari, was recorded and he also admitted the facts as stated by his partner, Shri Dinesh Kumar Johary. Further they have deposited the balance tax Rs.1,61,100/- on 31/07/2006. I, further, find from the facts on record that no case of deliberate default of the provisions of law is made out to the effect that the respondents were knowingly that the branded goods are liable to tax and clearing, the same without payment of duty, so as to evade payment of duty. Thus, no case of clearance with intent to evade duty is made out against the respondents. Further, I hold that under the facts and circumstances, the ld. Commissioner (Appeals) have erred in reducing the demand of duty and in view of the categorical admission by both the partners, wherein the proximate quantity of clearance have also been stated. I hold that ld. Commissioner (Appeals) have erred in reducing the duty demand and accordingly, I restore the demand of duty to Rs.3,11,100/-. In view of my finding that no case of deliberate defiance of the provisions of the Act and the Rules and/or suppression of facts is made out against the respondent firm and the partner, I set aside the penalties imposed on them. Thus the appeal, E/235/2009, is allowed in part as indicated herein & the appeal of the Revenue, E/236/2009, is dismissed.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Ansari

प्रमाणित प्रति / Certified True Copy
14/03/17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001