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: **24/08/2016**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/70686-70687/2016-EX[DB]** dated **04/08/2016**

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/1673-1674/2008	**J.J.FOAMS PVT. LTD.** B-12/2 SITE-IV,SAHIBABAD INDUSTRIAL AREA,DISTT. GHAZIABAD, (U.P.)
		Name and Address of Respondent
2		-C.C.E. MEERUT I EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005. -

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s):

A. L. MEHROTRA,CONSULTANT
L-54, SECTOR 11,
NOIDA,UTTAR PRADESH

4. Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy ~~17~~ Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No.E/1673, 1674/2008-EX[DB],

(Arising out of Order-in-Appeal No.95 & 96-CE/GZB/2008, dated 25/04/2008 passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
and
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

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

Ar

J.J. Foams Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Meerut I **Respondent**

Appearance:

Shri A.L. Mehrotra (Advocate) for Appellant
Shri M.K. Mall, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 04/08/2016
Date of Decision : 04/08/2016

FINAL ORDER NO. 70686-70687/2016

Per: Anil Choudhary

The appellant, a manufacturer of P.U. Foam, ~~the~~ foam articles, is in appeal against Order-in-appeal dated 25.04.2008 whereby the penalty imposed vide Order-in-Original Rs. 31,758/- under Rule 25 & 27 have been confirmed.

2. Heard the parties.

3. The admitted facts are that there was an incident of fire on 12.12.2005 in the factory of the appellant, wherein 1874.500 kg. P.U. Foam blocks were completely destroyed. Intimation of fire was given on 13.12.2005 to the Range Superintendent along with copy to the Deputy Commissioner. In the course of verification by the Excise Authority in the factory premises the stock was found Nil of the finished goods and in their ~~original~~ RG-I register the stock of 1874.500 kg. of P.U. forms of irregular shapes was mentioned, which has been lost in fire. Show cause notice was issued, demanding duty of Rs. 31,135/- and further penalty was proposed under Rule 25 and 27 read with Section 11AC of the Act. The appellant contested the show cause notice and stated that they had done their best to minimize the loss by informing the Fire Department immediately by occurrence of fire. Further, they have reversed the Cenvat Credit taken on input, used in the

manufacturer of goods amounting to Rs.30,967/-. They are filling application for remission of duty before Commissioner. Further, the claim submitted to the Insurance Company without including the element of duty. The demand was confirmed on contest observing that at the time of issuing of SCN appellant had not applied for remission of duty, but the same was applied subsequently on 19.04.2006. The Commissioner have rejected the remission claim by his order dated 25.01.2007. Further, it is observed that consequential upon finally remission case, the appellant is no necessity to consider defines of the appellant. Thus, the demand was confirmed. Further, relying on the observation of the learned Commissioner, the appellant has not taken reasonable care to prevent the recurrence of fire in the factory and relying on the same penalty have been imposed of Rs. 31,758/- jointly under Rule 25 & 27 of the CER, 2002, read with Section 11AC of the Act.

4. Being aggrieved, the appellant has preferred appeal before learned Commissioner vide the impugned order having pleased to reject the appeal.

5. The learned Counsel for the appellant states that as the amount was small they have not contested the rejection of remission claim on merits and have deposited the duty as imposed on them. So for the penalty imposed is concern, the learned Counsel states that there is no finding of any mis

patience and/or negligence or suppression of any facts on their part. It is not the case of Revenue that they were operating their factory without the consent of the concern authorities of the Fire Department or under the Factories Act. Accordingly, the penalty imposed is not sustainable and fit to be set aside.

6. Learned A.R. relies on the impugned order.

7. Having considered the rival contentions, we find that there is no finding against the appellant of any contumacious conduct, negligence or operating of their factory without proper consent as required under the law's. Accordingly, we set aside the imposed penalty. Thus, the appeal stands allowed.

Appeal No. E/1674/2008

8. In this appeal the dispute is against the levy of duty pursuant to the rejection of the remission claim. The learned Counsel have produced a copy of the Final Order No. A/53749/2014 (SM) order dated 19.09.2014, by which this Tribunal in respect to the fire incident which occurred on 18.06.2004 have held that there is no dispute as to the occurrence of the fire in the factory of the appellant. Further, the rejection of remission claim is without any justif~~y~~ied reason. Accordingly, this Tribunal has set aside the order of learned Commissioner rejecting the remission claim and allow the

appeal with consequential benefits to the appellant. Accordingly, we allow this appeal by way of consequential relief and set aside the impugned Order-in-Appeal and Order-in-Original demanding duty of Rs.1,66,053/- from the appellant along with equal amount of penalty.

9. Thus, both appeals are allowed as indicated herein above, with consequential benefits, if any.

(Dictated in Court)

Sd/-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

akp

प्रमाणित प्रति / Certified True Copy

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