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: 26/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71167/2016-SM[BR] dated 30/11/2016

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/3006/2010	**MOHAN CRYSTAL GLASS WORKS,** MOHAN MEAKIN LTD MOHAN NAGAR, GHAZIABAD (UP)
		Name and Address of Respondent
2		-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302

Copy To

3Advocate(s) / Consultant(s):

Rajesh Chhibber, CAS ASSOCIATES
A-403, 414-415 SOMDUTT
FA-9,KAVI NAGAR
GHAZIABAD,UTTARPRADESH
201002

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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
12 The ICFAI society. 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

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

APPEAL No.E/3006/2010-EX[SM]

(Arising out of Order-in-Appeal No.130-CE/GZB/2010 dated 30-06-2010 passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad)

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

Mohan Crystal Glass Works — **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad — **Respondent**

Appearance:

Shri Rajesh Chhibber, Advocate — for Appellant
Shri D.K Deb, Assistant Commissioner (AR), — for Respondent

CORAM:

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

Date of Hearing : 30/11/2016
Date of Decision : 30/11/2016

FINAL ORDER NO.:- 71167/2016

Per: Anil Choudhary

1. The issue in this appeal by the assessee, a manufacturer of glass bottles is, whether, they are liable to pay any excise duty on the transaction value, for removal of scrap, being broken, used and burnt copper wire, MS Scrap, refractory bricks scrap, and old electro meter, Under the provisions of Rule 3, (5 A) of Cenvat Credit Rules 2004, read with section 11 (A) of the Central Excise Act.

2. Heard the parties.

3. It is evident from the order of the Commissioner (Appeals) and from perusal of the show cause notice and the order is original, that there is no allegation or any finding, if the appellant assessee had taken Cenvat Credit on these items, at the time of acquisition.

It has been categorically pleaded by appellant before the courts below, that no Cenvat credit was availed on these items at the time of the acquisition and as such the provisions of Rule 3 (5 A), CCR 2004, are not attracted.

4. The appellant also filed a certificate from the C.A. in support of their contentions, which was not found untrue, nor the same was rejected by the court below. That the said certificate was not made available before the adjudicating authority and it was produced for the first time before the commissioner (Appeals). Thus the learned Commissioner (Appeals) observed - crucial period to submit such evidence,

having been over, this certificate is not admissible. Accordingly he upheld the demand of duty under rule 3, (5 A) of Cenvat Credit rules.

5. Having considered the rival contentions, I find that the learned Commissioner (Appeals) is in error, as the requirement of reversal of Cenvat credit, on removal of a Capital asset is dependent on the condition precedent, that an assessee have taken credit at the time of its acquisition.

6. In absence of such allegation and/or finding, the show cause notice is not sustainable, and the whole proceedings are vitiated. Accordingly I allowed this appeal and set aside the impugned order in appeal. The appellant is entitled to consequential benefit in accordance with law.

(Dictated in Court)

Sd/-
(Anil Choudhary)
MEMBER (Judicial)

प्रमाणित प्रति / Certified True Copy
28.12
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