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

Dated: 06/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70946/2016-SM[BR] dated 23/09/2016

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/534/2009	MOHAN CRYSTAL GLASS WORKS, PROP. MOHAN MEAKINS LTD, MOHAN NAGAR, GHAZIABAD.

	Name and Address of Respondent
2	-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302

Copy To

3 Advocate(s) / Consultant(s):

RAKSHIT VERMA,ADV
C/O PARTY

5 Bar Association, CESTAT, Allahabad

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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121006 (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

27/10/16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

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

APPEAL No.E/534/2009-EX[DB]

(Arising out of Order-in-Appeal No. 285-CE/GZB/2008 dated 16/12/2008 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

M/s Mohan Crystal Glass Works, **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad **Respondent**

Appearance:

Shri Rakshit Verma, Advocate for Appellant
Shri Pawan Kumar Singh, Supdt (AR), for Respondent

CORAM:

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

Date of Hearing : 23/09/2016
Date of Decision : 23/09/2016

FINAL ORDER NO: 70346/2016.....

Per: Anil Choudhary

The present appeal is filed by appellant assessee against the Order-in-Appeal No. 285-CE/GZB/2008 dated [illegible] passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad.

2. The brief facts of the case are :-

2.1 The appellants are engaged in the manufacture of glass bottles falling under heading No.70.70 of the First Schedule to the Central Excise Tariff Act,1985. The appellants opted for provisional assessment of their product for the year 2005-06. They deposited the differential duty before the finalization of provisional assessment. The adjudicating authority finalized the provisional assessment for the year 2005-06 and found that the differential duty already paid by the appellants is correct and appropriated the same. The adjudicating authority also ordered the appellants to pay interest at the appropriate rate in terms of Rule 7(4) of the Central Excise Rules, 2002.

2.2 Being aggrieved, the appellants have filed the appeal on the following main grounds:-

(i) That the impugned order to the extent of demanding interest is not supported by the law and facts.

(ii) That the impugned order to the extent of demanding interest has been passed without application of law and mind.

(iii) That the impugned order to the extent of demanding interest has been passed by ignoring the clear and obvious provisions of Rule 7(4) of the Central Excise Rules, 2002.

(iv) That it has been observed by Supreme Court of India and by various Tribunals and Appellate authorities that interest is not chargeable on the amount payable if the differential duty has been paid within the time prescribed under Rule 7(4) of the Central Excise Rules, 2002. Judgment in J.K. Industries Ltd. Vs CCE, Mysore 2006 (75) RLT 449 (CESTAT-Bang) is relevant.

(v) That Rule 7(4) clearly states that the liability to pay interest only arises if the differential duty is not paid consequent to the order for final assessment under Rule 7.

(vi) That the adjudicating authority failed to appreciate that in the instant case the differential duty had already been paid by the appellants before the date of final assessment.

3. Heard the parties.

4. Having considered the rival contentions, I find that the present issue relates to levy of interest at the appropriate rate in terms of Rule 7(4) of the Central Excise Rules, 2002. Both sides agree that the

instant issue is no more res-integra and the same is decided in favour of the appellant by the Judgment of the Hon'ble High Court of Bombay in the case of CEAT Ltd. Vs Commissioner of Central Excise & Customs, Nashik reported at 2015 (317) E.L.T. 192 (Bom.). Following the judgment of the Hon'ble High Court in the above-mentioned case, I set aside the impugned order to the extent of demand of interest and allow the appeal. The appellants will be entitled to consequential benefits, if any, in accordance with law.

(Dictated in Court)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

akp

प्रमाणित प्रति / Certified True Copy
25.10.16
Asstt. Registrar
(C.E.S.T.A.T.)
110001