FAX : 0532-2400149

REGISTERED / AD

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

To

Dated: 20/09/2017

Appellant as per address in table below
Respondent as per address in table below

<u>Final Order No. A/71124/2017-SM[BR] dated 22/03/2017</u>

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/516/2008	**Gsc Toughened Glass Pvt. Ltd.** C-50, Sector-57, NOIDA U.P.
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

Copy To
3<u>Advocate(s) / Consultant(s)</u>:

NISHANT MISHRA AND SUDARSHAN SINGH ADVOCATES B2-3/4-31, SAROJANI APARTMENTS, SAROJANI NAIDU MARG, ALLAHABAD-211001

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. I
APPEAL No. E/516/2008-EX[SM]

(Arising out of Order-in-Appeal No. 136-136A/CE/Noida/2007 dated 30/11/2007 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II[Noida])

M/s GSC Toughened Glass Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri Nishant Mishra, Advocate, for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision: 22/03/2017
FINAL ORDER NO. 71124/2017..........

Per: Anil Choudhary

The issue in this appeal is, whether Show Cause Notice was rightly issued on the same set of facts and disclosures made to the revenue, for change of opinion, and whether the demand raised against the appellant is sustainable. The issue being revenue neutral.

2. The brief facts of the case are as follows:-

(i) M/s GSC are engaged in the manufacture of toughened glass and the machinery used for the manufacture of toughened glass as well as furnace falling under Chapter 70, 84 & 85 of the Central Excise Tariff Act, 1985. The appellants vide their letter dated 04/03/2004 requested to the Assistant Commissioner, Central Excise, Division-II, Noida, applied for the permission for transfer of certain capital goods manufactured in their said unit to their another unit at Greater Noida for integration at Greater Noida Plant in phased manner and submitted a list of the machinery intended to be shifted. The said list included the machinery on which credit had been availed as well the machinery manufactured in their unit and issued for captive use on 27/02/2004, under Notification No. 67/95 dated 16/03/1995.

(ii) The Assistant Commissioner granted them the permission for transfer of Capital goods vide letter dated 15/03/2004 and they transferred the said goods to their unit at Phase-II, Noida on 15/03/2004, 16/03/2004 & 17/03/2004 in parts. The said list also included the machinery manufactured in their unit at Noida and issued for captive use on 27/02/2004 under Notification No. 67/95 dated 16/03/1995. The request of the appellant for transfer of capital goods was based on their assertion that the machinery intended to be transferred was used by them in their unit at Noida in the manufacture of goods and subsequently sought to be transferred to their unit at greater Noida.

(iii) The department conducted enquiries and on that basis alleged that the machines manufactured in their unit and shown issued for captive consumption were neither installed in their unit nor were used in production and were solely manufactured for their use in their new unit at Greater Noida. It was thus alleged that the sole purpose of asking for the permission for transfer of capital goods was to avoid payment of duty on such machinery on their transfer to their unit at Greater Noida. The allegation was based on the statement of Shri Rajinder Sadu, Finance Controller and the production record of the unit. It was found that the said machinery was manufactured in parts and entered in parts in their production register and such parts were issued for captive use in their factory on 27/02/2004. Further just after 4 days of the issue of the parts of the machinery for captive use, they applied for the transfer of goods to their unit at Greater Noida on 04/03/2007. Shri Sadu in his statement recorded on 28/10/2004 admitted that the machine parts shifted to their other unit on 15/03/2007 to 17/03/2007 were installed there prior to 29/03/2007. As such the inference was drawn that it took 12 days for installation of the machine at their unit at Noida after which it was used for production before it's transfer to their new unit.

(iv) On the basis of above facts it was alleged that when the parts of the machine were issued for manufacture on 27/02/2007, it was not possible to install the same till 04/03/2007 when they applied for the transfer of the said machine. Further in case the same would have been installed, it was not possible to dismantle the same and shift within one day of the grant of the permission. It was also alleged that the same was never put to production in their old unit as there was no noticeable increase in production during the said period suggesting the use of the machine in production as admitted by Shri Sadu in his statement. As such the Department alleged that they deliberately and intentionally mis-declared the facts to the Department and thus evaded payment of duty to the tune of Rs.18,14,336/- in contravention of Rule 4, 6, 8, 11 & 12 of the Central Excise Rules, 2002 as well as Rule 8 of the Cenvat Credit Rules, 2002. Accordingly a show cause notice for recovery of the said duty alongwith interest in terms of Section 11A & 11AB of the Central Excise Act, 1944 was issued upon the appellant. Penal provisions under Rule 25 of the said rules read with Section 11A of the Act were also invoked in the notice. Show cause notice proposing penalty on Shri Rajinder Sadu under Rule 26 of the said rules was also issued for his involvement in the alleged evasion of duty.

(v) The Adjudicating Authority confirmed the demand and also imposed equal penalty on the appellant. He also imposed a penalty of Rs. 4.5 laksh on Shri Rajinder Sadu. In his order, the Adjudicating Authority has drawn the inference that the appellant had wrongly availed the benefit of Notification No. 67/95 dated 16/03/1995 which was admissible only for issue of the goods for captive use within the factory itself. It has been held that since the goods were not installed and used in the manufacture of finished goods, the benefit of the said Notification was wrongly availed by them.

3. Being aggrieved the appellant company and its Finance Controller – Shri Rajinder Sadu preferred appeal before ld. Commissioner (Appeals) who was pleased to confirm the demand with penalty on the appellant company. At the same time, he was pleased to set aside the penalty on the Finance Controller – Shri Rajinder Sadu.

4. Being aggrieved the appellant company is before this Tribunal.

5. Heard the ld. Counsel, Mr. Nishant Mishra, for the appellant who have taken me through the whole Show Cause Notice. After going through the Show Cause Notice, I find that no new facts have come on record. The appellant fabricated some machinery in their unit located at C-49-50, Sector 57, Noida, which is engaged in manufacturing of machines and its accessories, fittings of door closures, and manufacture of Toughened Glass. The appellant setup a similar unit at Plot No. 5, Udyog Vihar Industrial Area, Greater Noida for similar items. It is evident from the record that the appellant after

fabricating the machinery had installed the same in their old units, at Sector 57, Noida and thereafter under proper permission which was granted after due verification by the Central Excise Authority, shifted the machinery to the new plant at Greater Noida without payment of duty as permissible under the scheme of the Act and the Rules. The Show Cause Notice dated 07/03/2005 has been subsequently issued after almost a year on the basis of change of opinion. There are no new facts brought on record and/or any information, which have come in possession of the Adjudicating Authority. Further, I find that the finished products of both the units, the Unit, Sector 57, Noida & the new Unit at Udyog Vihar Industrial Area, Greater Noida are excisable. Thus, if any duty is paid by the Unit-I on removal of machinery, fabricated in their premises, the credit for the same is available to the new Unit under the same management. Therefore, the exercise is also revenue neutral. In this view of the matter, I hold that the Show Cause Notice is not tenable. Accordingly, the appeal is allowed and the impugned order is set aside. The appellant will be entitled to consequential benefits, if any, in accordance with law.

(Dictated and pronounced in Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ansari

प्रमाणित प्रति/Certified True Copy 03/10/17

सहायक पंजीकार/Asstt. Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
30, एम.जी.मार्ग, इलाहाबाद-211001
30, M. G. MARG, ALLAHABAD-211001