

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066**  
**SINGLE MEMBER APPEAL BRANCH**

Appeal No. E/3881/2005-SM[BR]

Date 28/01/2008

Assistant Registrar  
C.E.S.T.A.T, New Delhi

To :  
KAJARIA CERAMICS LTD  
A-27, 28 & 29, INDUSTRIAL AREA, SIKANDRABAD

KAJARIA CERAMICS LTD

Appellant  
Vs  
Respondent

C.C.E NOIDA

I am directed to transmit herewith a certified copy of Final order No. 184/2008-SM[BR] dated 27.12.2007 passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

  
Assistant Registrar  
(SM Appeal Branch)

**Copy to :**

1. Respondent  
C.C.E NOIDA  
B-123, SECTOR-5, NOIDA
2. Adv. / Consult  
MR.S. K. PAHWA  
MARWAH & PAHWA, 45, ARADHANA SECTOR 13, R. K. PURAM, NEW DELHI-110066.
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

  
Assistant Registrar  
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH  
NEW DELHI, COURT NO. III**

**Excise Appeal No.3881 of 2005-SM (BR)**

[Arising out of order in appeal No.105/CE/APPL/NOIDA/05 dated 21.10.05 passed by the Commissioner (Appeals), Central Excise, Meerut-II (Noida).

**Date of Hearing/ Decision: 27.12.2007**

**For approval and signature:**

**Hon'ble Mr. P.K. Das, Member (Judicial)**

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|--|---|------|
| 1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.         | : |      |
| 2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | : | } 20 |
| 3. Whether Their Lordships wish to see the fair copy of the Order?   | : |      |
| 4. Whether Order is to be circulated to the Departmental authorities?  | : |      |
- 

M/s. Kajaria Ceramics Ltd.

Appellants  
[Rep. by Mr. S.K. Pahwa, Advocate]

Vs.

CCE, Noida

Respondent  
[Rep. by Mr. Atul Rastogi, Authorized Representative (DR)]

**CORAM: Mr. P.K. Das, Member (Judicial)**

Final Order NO.....184/08-SM(BR)...../Dated:27.12.2007

Per P.K. Das:

The appellant filed this appeal against rejection of refund of interest. The Id. Advocate on behalf of the appellants submits that the appellants deposited Rs.1,37,473/- along with interest of Rs.6,874/- totaling to Rs.1,44,347/- towards Cenvat Credit on closing stock of LDO as on 28<sup>th</sup> Feb.2003. at the instance of the Audit party. He submits that subsequently the Hon'ble High Court of Karnataka in the case of M.S. Grasim Industries Ltd. reported in 2004 (163) ELT 10 (Karnataka) held that Cenvat credit is not required to be reversed on closing stock of LDO as on 28<sup>th</sup> Feb., 2003. The appellant filed refund claim of Rs.1,44,347/- on 7<sup>th</sup> April, 2004. The adjudicating authority sanctioned refund of Rs.1,37,473/- and rejected the interest amount of Rs.6,874/- as there is no provision for refund of interest under Section 11 B of the Central Excise Act. It has also rejected the payment of interest on deposit of Rs.1,37,473/- on the ground that the issue was finally settled on 22<sup>nd</sup> March, 2005 by issue of CBEC Circular No.812/9/2005 and refund was sanctioned on 24<sup>th</sup> April, 2005. The Commissioner (Appeals) upheld the adjudication order.

2. Ld. Advocate on behalf of the appellant submits that the Tribunal in the case of Mothersons Sumi Systems Ltd. Vs. CCE, Noida reported in 2007 (5) S.T.R. 16 (Tribunal-Delhi) held that amount of interest wrongly collected

is liable to refund. He also relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of CCE Vs. Northern Minerals Ltd. reported in 2007 (216) E.L.T 198 (P & H). He further submits that the appellant is entitled to interest after expiry of 3 months from the date of receipt of refund application as held by the Tribunal in the case of CCE, Pune Vs. Ballarpur Industries Ltd. reported in 2007 (215) ELT 380 (Tribunal-Mumbai) and CCE, Pune-III Vs. Sterlite Industries (I) Ltd. reported in 2007 (212) ELT 520 (Tribunal-Mumbai).

3. The ld. DR reiterates the findings of the Commissioner (Appeals).

4. After hearing both the sides, I find that the amount of Rs.6,874/- was deposited by the appellant as interest. The Revenue refused to refund the said amount as there is no provision under the Central Excise Law. The Tribunal in the case of Mothersons Sumi Systems Ltd. (supra) held that any amount wrongly collected, Department can not refuse refund on ground that it is not provided under statutory provisions of refund. Same view is taken by the Hon'ble Punjab & Haryana High Court in the case of Northern Minerals Ltd. (supra). So, the denial of refund of interest of Rs.6,874/- is set aside.

5. The appellant filed the refund claim on 7<sup>th</sup> April, 2004, which was sanctioned on 24<sup>th</sup> May, 2005. The Commissioner (Appeals) observed that

the issue was finally settled only on 22.3.2005 by issue of CBEC Circular. It is seen from the record that the appellant filed refund application consequent upon the decision of the Hon'ble High Court of Karnataka. The Tribunal in the case of CCE, Pune-III Vs. Sterlite Industries (I) Ltd. (supra) held that the assessee is entitled to interest from expiry of three months from date of receipt of refund application under Section 11BB of Central Excise Act, 1944. So, in the present case, the appellant is entitled to interest from the expiry of three months from 7<sup>th</sup> April, 2004 (i.e. date of receipt of refund application). In view of the above, the adjudicating authority is directed to pay the interest in the above terms, in accordance with law.

Order dictated & pronounced in open court on 27.12.2007.

( P.K. Das )  
Member (Judicial)

Ckp.