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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/2975/2006-SM[BR] Date 18/02/2008

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

To :
M/S ASIAN (HYGENIC) FOOD INDUSTRIES (P) LTD
10TH MILESTONE, MEERUT ROAD, DUHAI,
GHAZIABAD

M/S ASIAN (HYGENIC) FOOD INDUSTRIES (P) LTD Appellant

Vs

THE COMMISSIONER OF CENTRAL EXCISE Respondent
GHAZIABAD

I am directed to transmit herewith a certified copy of Final order No305/2008-SM[BR]. dated 13.2.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   THE COMMISSIONER OF CENTRAL EXCISE
   GHAZIABAD
   CAMP OFFICE, ROOM NO.232, C.G.O COMPLEX-I,
   KAMLA NEHRU NAGAR, GHAZIABAD
   201002
2. Adv. / Consult
   MR.S.JAINA & ASSOCIATES
   84,DARYAGANJ,N.DELHI
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 Publictions (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 & SERVICE TAX APPELLATE TRIBUNAL, WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

EXCISE APPEAL NO. 2975 OF 2006-SM

[Arising out of Order-in-Appeal No. 65-Ce/GZB/2006 dated 29.05.2006 passed by the Commissioner (Appeals), Central Excise, Ghaziabad]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President

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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
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. Asian (Hygenic) Food Inds. (P) Ltd. — Appellants

Vs.

CCE, Ghaziabad — Respondent

Appearance:

Ms. Seema Jain, Advocate
Shri A.K. Rastogi, SDR for the Revenue,

Coram:

Hon'ble Mr. S.S. Kang, Vice President

Date of Hearing: 12th February, 2008

FINAL ORDER NO. 305/08-SM(BR) dated 13-2-08

Per S.S. Kang:

Heard both sides.

2. Appellants filed this appeal against the impugned order whereby demand was confirmed in respect of inputs found short on which credit has been availed and the finished goods found short. The appellants are not disputing demand of duty as the same has been paid. Only contention of the appellants is that it is not a case for imposition of penalty as there was no intention on their part to evade payment of duty.

3. Contention is also that when the duty has been paid prior to the issuance of show cause notice imposition of penalty is not sustainable.

4. Revenue submitted that the Hon'ble Punjab & Haryana High Court in the case of CCE vs. Omkar Steel Tubes (P) Ltd., reported in 2008 (221) ELT 200 (P&H) has held that in case duty has been paid prior to issuance of show cause notice and there is ~~no~~ allegation of suppression with intent to evade payment of duty, penalty under Section 11AC of the act is imposable. In the present case finished goods were found short and the inputs on which credit has been

availed were also found short and there is no evidence on record that the appellants informed the department or in the present proceedings the appellants have not given any explanation in respect of shortage. Therefore, it is a clear case of suppression. I find no merit in the appeal. The same is dismissed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 13th February, 2008

RK