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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/3873 -3874 /2006-SM[BR] Date 01/04/2008

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

To :
FARUKHI GLASS INDUSTRIES [2]SHRI.SATISH PRAKASH MITTAL PARTNER
M/S FARUKHI GLASS INDUSTRIES;-----------
AGRA ROAD, FAIZABAD.

FARUKHI GLASS INDUSTRIES Appellant

Vs

C.C.E.KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 538 -539 /2008 –SM[BR] dated 27.3.08

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.KANPUR
   117/7, SARVODAYA NAGAR, KANPUR.
2. Adv. / Consult
   MR. BIPIN GARG ADV.
   B-1/ 1289 –A, VASANT KUNJ NEW DELHI-70
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. 3873-3874 OF 2006-SM

[Arising out of Order-in-Appeal No. 404-CE/APPL/KNP/06 dated 30.08.2006 passed by the Commissioner (Appeals), Central Excise, Kanpur]

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?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Lordships wish to see the fair copy of the order?	Yes
4.	Whether order is to be circulated to the Departmental authorities?	No

M/s. Farukhi Glass Industries — Appellants

Vs.

CCE, Kanpur — Respondent

Appearance:

Shri Bipin Garg, Advocate for the appellants,
Shri Sumit Kumar, SDR for the Revenue

Coram:

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

Date of Hearing: 27th March, 2008

FINAL ORDER NO. 538-39/08-SM (BR) dated 27.3.08

Per S.S. Kang:

Heard both sides.

2. The appellants filed ~~this~~ appeals against the impugned order whereby demand of Rs. 38410/- was confirmed and penalties were imposed. Demand was confirmed after denying credit in respect of paper on the ground that the appellants started manufacturing of corrugated boxes in their factory w.e.f. 1st August, 2004 and the credit was taken in July, 2004 when there was no such manufacturing facility with the appellants.

3. Contention of the appellants is that they are engaged in the manufacture of glass tumbler, cup, plates and bottles etc. Prior to 1.08.2004 the appellants were procuring corrugated boxes from market and they also procuring paper regarding which they are taking credit. Paper is used for wrapping glass tumbler and glass wares at the time of packing. Wrapped glass items are then put in boxes. Contention is that in reply to the show cause notice the appellants specifically taken stand that paper sheets on which credit has been taken was used for wrapping glass articles during packing. There is no evidence that paper was cleared as such. The appellants are also adding cost of sheet

in assessable value of their finished goods for the purpose of payment of Central Excise duty.

4. Contention of the Revenue is that at the time of visit the appellants were not maintaining record regarding paper sheet and corrugated boxes captively consumed. Contention is that as the facility to manufacture corrugated boxes was there w.e.f. 1.08.04, prior to this date appellants had wrongly taken credit in respect of paper which is used in the manufacture of corrugated boxes.

5. I find that the appellants are manufacturing glass and glass ware which is fragile and breakable in nature. The case of the appellants is that paper in question is used for wrapping glass articles while packing in corrugated boxes. This plea was taken in reply to the show cause notice and is recorded in the adjudicating order also. There is no finding on this plea, taken by the appellants, nor this fact had been denied. There is no evidence that the appellants had received paper regarding which credit has been taken and the same has been cleared as such without payment of duty. It is also on record that the appellants were including the value of paper in the assessable value of their final product for the purpose of payment of duty. In view of this I find merit in the contention of the appellants. Accordingly, appeals are allowed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 27th March, 2008

RK