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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/2038/2006-SM[BR] Date 04/04/2008

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

To :
M/S MICO GLASS INDL P LTD.
KHASRA NO-15/3,VILL-BEGUMPUR KHATOLA,
GURGAON

M/S MICO GLASS INDL P LTD. Appellant
Vs
CCE,DELHI-III, Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 549 /2008 –SM[BR] dated 18.2.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   CCE,DELHI-III,
   DELHI-III,GURGAON
2. Adv. / Consult SHRI. HASIJA. ADV.
   B-6/10SAFDARJUNG ENCLAVE NEW DELHI-29

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

Excise Appeal Nos. 2038 of 2006 –SM (BR)
[Arising out of order in appeal No. 61/GRM/GGN/2006 dated 20.02.2006 passed by the Commissioner (Appeals) Central Excise, Delhi-III, Gurgaon]

Date of Hearing/ Decision: 18.02.2008

For approval and signature:
Hon'ble Mr. P.K. Das, Member (Judicial)

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? : No
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 Mico Glass Industries Pvt. Limited — Appellant
[Rep. by Mr. Hasija, Advocate for the Appellant]

Vs.

CCE, Delhi-III — Respndent
[Rep. by Mr. A.K. Rastogi, Authorised Representative (DR)]

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

Final **ORDER** 549/2008-SM(BR)

Per P.K. Das:

Heard both sides and perused the records.

2. The appellants are engaged in the manufacture of Safety Toughened and Edge Worked Glass Tinted. On 15.07.98, the Central Excise Officers visited the appellant's factory and verified the stocks and ascertained shortage of finished goods. The appellant deposited Rs. 2 lacs out of Rs., 2,41,460/- of the alleged shortage material. The learned Advocate submits that the demand is barred by limitation as the show cause notice was issued on 09.04.2001. He relied upon the

decision of the Tribunal in the case of Gammon India Ltd., vs. CCE, Goa reported in 2002 (146) ELT 173 (Tri. Mumbai) which was affirmed by the Hon'ble Supreme Court reported in 2002 (146) ELT A313. But, the learned Advocate seriously objected the imposition of penalty as there is no evidence of clandestine removal and it is a case of shortage of goods detected during stock verification.

2. On perusal of the records, I find that as the appellant disputed the shortage of the finished goods and therefore, the Central Excise Officer enquired the matter at length. So, the contention of the appellant that the demand is barred by limitation is not sustainable. In any event, the shortage was detected during stock verification and there is no material of clandestine removal of the goods. Accordingly, I do not find any reason to impose penalty or equal amount of duty under section 11AC of the Central Excise Act, 1944. So, the penalty under Section 11AC of the Central Excise Act, 1944 is set-aside and the order is modified accordingly.

(Order dictated and pronounced in the open Court)

(P.K. Das)
Member (Judicial)

[Pant]