TELEGRAM :-CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/775 /2007 – SM[BR] Date 19/11/2008

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

To :
C.C.E, ALLAHABAD
38, M.G.MARG, CIVIL LINES, ALLAHABAD

C.C.E, ALLAHABAD Appellant
Vs
GOVIND MILLS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1474 / 2008 – **SM[BR]** dated 24.10.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
GOVIND MILLS LTD.
BARGADWA VIKAS NAGAR, GORAKHPUR, (U.P.)
2. Adv. / Consult
SHRI AMIT AWASTHI ADV.
113 / 145, SWAROOP NAGAR KANPUR [U.P]

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg, 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.775 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.146-CE/ALLD/2006 dated 22.12.2006 passed by the Commissioner of Central Excise (Appeals), Allahabad (U.P.)]

Date of Hearing/ Decision:24.10.08

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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? :
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? : Yes

CCE, Allahabad ...Appellants
[Rep. by Shri R.K. Verma, DR]

Vs.

M/s. Govind Mills Ltd ...Respondent
[Rep. by None.]

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

Final Order No. 1474/08-SM (BR)/Dated:24.10.2008

Per P.K. Das:

Heard the ld. DR on behalf of the Revenue. None appeared on behalf of the Respondent despite issue of notice.

2. After hearing the ld. DR and on perusal of the records, it is seen that there was a charge of suppression of the facts of availment of irregular credit with intent to evade payment of duty. The Adjudicating Authority refrained from imposing penalty on the ground that the duty was deposited before issue of show cause notice under Section 11 A of the Central Excise Act, 1944 and no penalty is imposable. The Commissioner (Appeals) upheld the adjudication order on the ground that the duty was deposited before issue of show cause notice following the decision of the Larger Bench of the Tribunal in the case of CCE Vs. Machino Montell (I) Ltd. reported in 2004 (168) ELT 466 (LB-). The Revenue in the present appeal contended that the Commissioner (Appeals) had not examined the case that the Respondent suppressed the facts of avialment of irregular credit with intent to evade payment of duty.

3. Ld. DR relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of Commissioner of Central excise Vs. Omkar Steel Tubes (P) Ltd. – 2008 (221) ELT 200 (P&H). It has been held that mere fact that duty has been paid before issuance of show cause notice would not result into in application of Section 11 AC of the Act. ~~are satisfied including presence of mens rea.~~

4. In view of the decision of the Hon'ble Punjab & Haryana High Court in the case of Omkar Steel Tubes (P) Ltd. (supra), I set aside the order of the Commissioner (Appeals) and the matter is remanded to the

Commissioner (Appeals) to decide afresh after considering the decision of the Hon'ble Punjab & Haryana High Court in the case of Omkar Steel Tubes (P) Ltd. (supra). The appeal is allowed by way of remand.

Order dictated & pronounced in open court on 24.10.2008.

(P.K. Das)
Member (Judicial)

Ckp.