

**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/1513/2006-SM[BR]

Date 22/05/2008

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

To :  
M/S KAJARIA CERAMICS LTD.  
A-27/28/29,INDL AREA,SIKANDRABAD  
M/S KAJARIA CERAMICS LTD.

CCE,NOIDA

Appellant  
Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No. 801 /2008 -SM[BR] dated 8.5.2008  
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

  
Assistant Registrar

(SM Appeal Branch)

**Copy to :**

1. Respondent

CCE,NOIDA

B-123,SECOTR-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. 46, Saket, New Delhi 110017

7. M/s Centax Publications (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -

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 60017

13. Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file

  
Assistant Registrar  
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
COURT NO.II

E/Appeal No.1513/06-SM

(Arising out of order in appeal No.123/CE/Apl/Noida/05 dated 14.12.05  
passed by the Commissioner of Central Excise (Appeals), Noida)

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 ?
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

Appellant  
(Rep. by Shri S.K. Pahwa, Consultant)

Vs

CCE, Noida

Respondent  
(Rep. by Shri S.L. Meena, DR)

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

Date of Hearing: 8.5.08

Final Order No. 801 /2008-SM(BR)

Per P.K. Das:

After hearing both the sides and on perusal of the record, I find that the appellants deposited the duty alongwith interest under protest pertaining to Audit objection. Subsequently, the issue was decided in favour of the

appellants by the Hon'ble Supreme Court and Board issued a Circular No. 721/37/03-CE dated 6.6.03 on the basis of the decision of the Hon'ble Supreme Court. The Adjudicating Authority refunded the duty paid under protest but he refused to return the interest as there is no provision under the Central Excise law. The learned Advocate submits that the amount of interest is Rs.6,753/-. The Appellants filed appeal before the Commissioner (Appeals) which was rejected on the ground that the impugned order of the Adjudicating Authority was not filed with the Memorandum of Appeal.

2. I find that the Commissioner (Appeals) rejected the appeal on the technical ground without issuing any Defect Memo. Therefore, the order of the Commissioner (Appeals) is not sustainable. The learned Advocate submits that the appellants filed the order of the Adjudicating Authority with the Memo of Appeal. So, the impugned order is set aside and the matter is remanded back to the Commissioner (Appeals). In any event, if it is seen that the appellant has not filed the impugned order of the Adjudicating Authority, they will be given an opportunity to file the order. Needless to say, the Commissioner (Appeals) shall give proper opportunity of hearing to the appellants. The appeal is allowed by way of remand.

(Order dictated and pronounced in the open Court).

MPS\*

(P.K. Das)  
Member(Judicial)