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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/2625/2006-2626/2006-SM[BR] Date 12/06/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. M/S TIGER SONS GLASS INDUSTRIES P LTD.
2. MR, DHARMENDRA MOHAN GUPTA, DIRECTOR
DHOLPUR AGRA ROAD, FIROZABAD

M/S TIGER SONS GLASS INDUSTRIES P LTD. Appellant

Vs

C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 921 -922 /2008 –SM[BR] dated 22.5.2008

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar

(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E. KANPUR
   117/7, SARVODAYA NAGAR, KANPUR 208005.
2. Adv. / Consult
   MR.RAJENDRA PRASAD PAL
   29/207 F, SANJAY PLACE, AGRA
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 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)

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

Excise Appeals Nos.2625-2626 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.178-179-CE/APPL/KNP/06 dated 27.4.2006 of the Commissioner of Central Excise (Appeals), Kanpur)]

Date of Hearing/ Decision:22.5.2008

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.		N.
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?	:	

1. M/s. Tiger Sons Glass Industries P. Ltd.
2. Mr. Dharmendra Mohan Gupta, Director ...Appellants

Rep. by Sh. Rajendra Prasad Pal, Advocate

Vs.

CCE, Kanpur Respondent

[Rep. by Shri S. Gautam, DR]

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

Final Order No. 921-22/08-SM Dated:22.5.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that the Appellant No.1 (in short 'the Company") is engaged in the manufacture of Glass Tubes falling under Chapter 70 of the Schedule to the Central Excise Tariff Act, 1985. On 4th July, 2007, the Central Excise Officers visited the factory and verified the stock of finished goods and raw materials. The said officers ascertained shortage of finished goods involving central excise duty of Rs.62,006.00 and raw materials involving duty of Rs.41,108.00. The Appellant No.2, Director of the Company admitted the shortage and deposited the entire amount of duty on 7.7.2004. The Adjudicating Authority confirmed the demand of duty and appropriated the entire amount as deposited by the Appellants. He also imposed penalty of equal amount of duty under Section 11 AC of the Central Excise Act, 1944 and Rule 25 of the Central Excise Rules, 2002 separately and also imposed a penalty of equal amount of duty under Rule 26 of the said Rules upon the Respondent No.2, Director of the Company. The Commissioner (Appeals) modified the Adjudication Order in so far as the penalty was reduced to Rs.1,00,000/- (Rupees One Lakh only) on the Appellant No.1 and Rs.50,000/- (Rupees Fifty Thousand only) on the Appellant No.2.

2. Ld. Advocate on behalf of the Appellants submits that the shortage of raw materials and finished goods was detected during stock verification and there is no evidence of clandestine removal and, therefore, penalties are not imposable. He drew the attention of the Bench to the relevant portion of the statement of the Appellant No.2 as under:-

> " I have to state the reason of shortage is the finished goods there was deotrification of soda in the tube, which converted the finished goods into scrap

and for the shortage of raw materials, it appears the same has been removed from the factory without issue of invoice by our staff in my absence."

He relied upon the decisions of the Tribunal in the case as under:

(1) Commissioner of Central Excise, Nasik Vs. Pushpadanteshwar SSK Ltd.
2008 (221) ELT 408 (Tribunal-Mumbai)

(2) CCE and C, Aurangabad Vs. Matsyodari Steel & Alloys P. Ltd.
2008 (225) ELT 176 (Mumbai)

3. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that the Appellant No.2 in his statement stated that the goods found short were removed from the factory without issue of invoice by his staff. He further submits that it is a case of clandestine removal, therefore, imposition of penalty are justified.

4. After hearing both the sides and on perusal of the records, I find that the shortage was detected during the stock verification. The Appellant No.2, Director of the Company in his statement stated the reasons for shortage. It was stated that the major portion of the finished products were converted into the scrap due to decertification of soda. It is also stated that some portion of the materials were removed without issue of invoice by their staff. Thus, it is apparent on the face of the record that the materials were removed without issue of invoice and, therefore, Section 11 AC was rightly invoked. The Hon'ble Delhi High Court in the case of Commissioner of Central Excise Vs. Malbro Appliances P. Ltd. reported in 2007 (208) ELT 503 (Delhi) held that imposition of penalty

under Section 11 AC of the Act is the discretionary power of the Authority. The Hon'ble High Court upheld the order of the Tribunal wherein the penalty was imposed 25% of the duty, as the duty was deposited before issue of show cause notice. In the present case, the Appellant deposited the duty before issue of show cause notice and, therefore, penalty is reduced to Rs.30,000/- (Rupees Thirty Thousand only) on Appellant No.1. I do not find any material to impose penalty on the Appellant No.2 under Rule 26 of the Rules. It is seen from the statement that the Appellant No.2 was not aware of the removal of the goods and, therefore, penalty imposed on the Appellant No.2 is set aside. Accordingly, the appeal filed by the Appellant No.2 is set aside and the penalty is reduced to Rs.30,000/- (Rupees Thirty Thousand only) in respect of the Appellant No.1.

(Order dictated & pronounced in open court on 16.4.2008).

(P.K. Das)
Member (Judicial)

Ckp.