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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/1635/2007 – SM [BR]   Date 18/03/2009

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

To :
M/S GLASS EQUIPMENT (INDIA) LTD.
P.O. BOC NO 17,BAHADURGARH (HARYANA)

M/S GLASS EQUIPMENT (INDIA) LTD.   Appellant
Vs
C.C.E. ROHTAK   Respondent

I am directed to transmit herewith a certified copy of **Final order No. 211 / 2009 –SM[BR]** dated **3.3.2009**

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. ROHTAK
SCO NO,6 SECTOR 1, ROHTAK.
2. Adv. / Consult
MR.R.PAL SINGH
84, DARYAGANJ, N.DELHI

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-II

Date of hearing/decision: 27.02.2009

Excise Appeal No. 1635 of 2007 - SM

M/s Glass Equipment (India) Limited ...Appellant

Vs.

CCE, Delhi-III Respondent

Appeared for Appellant - Mr. R. Pal Singh, Advocate
Appeared for Respondent - Mr. M.M. Singh, DR

Coram: Hon'ble Mr. D.N. Panda, Judicial Member

Final Order No. 211/09-SM(BR)

Per D.N. Panda

Learned Counsel submits that the defaulted amount of duty was paid with interest at higher rate, while the interest rate was 13% at the relevant point of time. When the appellant came to know higher interest amount was paid refund thereof was claimed. Without examining the applicable rate of interest that should have been asked from the appellant, both the authorities below held that higher rate of interest shall be payable on defaulted amount for which nothing is to be refunded when no excess payment was made. To get his claim, learned Counsel relies on the Notification No. 66/2003 dated 12.09.2003.

2. Learned DR fully agrees that the department does not propose to realise any amount from an assessee that is not due but interest applicable on the relevant date on the defaulted amount should be payable. Rate of interest is notified from time to time. If governing notifications are looked into, the rate of interest as applicable at the relevant point of time can be ascertained and that shall be adopted. Therefore, on application of the right rate of interest, if there is

anything excess found to have been paid by the appellant, that is refundable to the appellant subject to meeting the test of unjust enrichment.

3. Heard both sides and perused the record.

4. In view of the dispute relating to rate of interest and the guideline that can be verified from notifications, learned adjudicating authority is directed to grant an opportunity to the appellant and examine proper notification applicable to the case in hand and adopt the rate of interest to determine ultimate liability which is not disputed. If the rate of interest applicable results with an excess payment made by the appellant, the appellant is certainly have a right to refund. However, refund if any, that may arise should meet the test of unjust enrichment. With the above observation, the matter is remitted to the adjudicating authority to do the needful in the matter. He shall pass a speaking and reasoned order following due process of law.

(Dictated and pronounced in the open Court).

[D.N. Panda]
Judicial Member

[Pant]