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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/1465/2007 – SM [BR] WITH E/ CO/202 / 2007 Date 23/03/2009

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

To :
C.C.E. KANPUR

117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S HIND GLASS INDUSTRIES Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 241 / 2009 –SM[BR] dated 13.3.2009

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

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

M/S HIND GLASS INDUSTRIES

AGRA ROAD, RAJA KA TAL, FIROZABAD
2. Adv. / Consult SHRI P.RAM, CONSULTANT.
C/O RESPONDENT;------------------

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.1465 of 2007-SM &
Excise CO/202/2007-SM

[Arising out of Order-in-Appeal No.162-CE/APPL/KNP/2007 dated 30.03.2007 passed by the Commissioner of Central Excise (Appeals), Kanpur]

Date of Hearing/ Decision:13.03.09

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?	:	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?	:	yes

CCE, Kanpur ...Appellants
[Rep. by Shri S.K. Bhaskar, DR]

Vs.

M/s. Hind Glass Indus. ...Respondent
[Rep. by Shri P. Ram, Consultant]

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

Final Order No.241/09-SM(BR)/Dated:13.3.2009

Per P.K. Das:

The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of glass and glass wires. On 9.3.2006, the Central Excise Officers visited the respondent's factory and verified the stock of finished goods. The central excise officers detected shortage of finished goods involving central excise duty of Rs.2,00,736/-. Shri Ram Narain Gupta, Authorised Signatory of the Respondent Company admitted the shortage in his statement and debited the duty on 13.3.2006. The Original Authority confirmed the demand of duty and appropriated the amount as deposited by the respondent. He also imposed penalty of equal amount under Section 11 AC of the Central Excise Act, 1944. The Commissioner (Appeals) set aside the penalty as the respondent deposited the entire amount of duty 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. - 2004 (168) ELT 466 (T-LB). Hence, Revenue filed this appeal against setting aside of penalty.

2. After hearing both the sides and on perusal of the records, I find from the Adjudication Order that the Representative of the respondent company accepted that the goods were cleared from the factory premises without cover of any invoice. Thus, it is a clear case of clandestine removal of the goods. Accordingly, penalty under Section 11 AC of the Act is justified. However, it is seen that the respondent deposited the duty before issue of the show cause notice. The Hon'ble Delhi High Court in the case of K.P. Punches (P) Ltd. Vs. U.O.I. reported in 2008 (228) ELT 31 (Delhi) and in the case of CCE Vs. Malbro Appliances Pvt. Ltd. reported in 2007 (208) ELT 503 (Delhi) held that if the assessee paid the duty before issue of show cause notice, penalty is imposable 25% of duty

in view of proviso to Section 11 AC (1) of the Act. In the present case, the respondent paid the duty before issue of show cause notice and, therefore, the penalty would be reduced to 25% of duty i.e. Rs.50,200/-. Accordingly, I set aside the order of the Commissioner (Appeals) and restore the order of the Original Authority and penalty is reduced to Rs.50,200/-. The appeal filed by the Revenue is disposed of in the above terms. Cross objection is also disposed of.

Order dictated & pronounced in the open court on 13.03.2009.

(P.K. Das)
Member (Judicial)

Ckp.