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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/ 2857 – 2858 / 2007 –SM[BR] Date 17/11/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. M/S SUNTECH GLASS PVT. LTD.
2. SH. VINEET GULATI , DIRECTOR
A-81, SECTOR -58, NOIDA

M/S SUNTECH GLASS PVT. LTD. Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1421 – 1422 / 2009 –SM[BR] dated 9.11.2009 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. MEERUT II

OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)

2. Adv. / Consult

MR.PRAVEEN SHARMA

KF-84, KAVI NAGAR, GHAZIABAD

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 2857-2858 of 2007-SM(BR)

[Arising out of Order-in-Appeal No. 87-88-CE/NOIDA/2007 dated 20.8.2007 passed by Commissioner of Central Excise (Appeals), Meerut-II at NOIDA]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3. Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

M/s. Suntech Glass Pvt. Ltd.
Shri Vineet Gulati, Director — Appellants

Vs.

Commissioner of Central Excise
Meerut II — Respondent

Appearance:

Shri Praveen Sharma, Advocate for the Appellants
Shri R.K. Saini, JDR for the Respondent

Date of Hearing/decision : 9.11.2009

ORAL ORDER NO. 1421 – 1422/2009 SM(BR)

Per M. Veeraiyan:

These appeals arise out of common order-in-appeal No. 87-88-CE/NOIDA/2007 dated 20.8.07.

2. Heard both sides.

3. The relevant facts, in brief, are that the appellants company is engaged in manufacture of toughened glass; started manufacturing activity with effect from July, 1997; obtained Central Excise Registration in July, 1998. The officers visited the factory on 27.8.2001. They recovered certain private records in the form of loose invoices, found evidence relating to recovery of 10 to 15% over and above billed amount in cash which were not reflected in the invoices; they also recovered "a red coloured note book" from the premises of the appellant company.

3. Shri Vineet Gulati, Director of the appellant company submitted that in respect of loose papers relating to period July, 1997 to January, 2001 which indicated clearance of goods valued at Rs.1,90,236/-, the same were rough invoices of unauthenticated pile of invoices and the same were prepared on rough basis and they were not cases of clandestine removal. He also submitted that that the collection of 10 – 15% of over and above invoices were towards freight, packing and handling charges which need not form part of the assessable value. As regards red coloured note book, his submission was that the said ledger contained details relating to manufacturing unit as well as trading activity which was done from their

Kalkaji office; the ledger recorded receipt of orders from various parties; the quotation and the estimates were mentioned with reference to the challan date, but the goods might have been supplied few days later from the date of entry so made as sometimes the raw material required might not have been readily available. A show cause notice was issued alleging that Rs.6738.44 was recoverable as duty on clandestine removal covered by loose invoices, that Rs.97,022/- was recoverable relating to amount of extra ~~entire~~ collection in respect of accounted clearance; show cause notice also proposed to demand duty on a value of Rs.35,51,789/- based on entries in the red coloured note book which were not tallied with the sale from the manufacturing unit and sale from the trading unit. Original authority confirmed the demand of Rs.6,72,087/- along with interest and imposed equal amount of penalty and also imposed penalty on the Dealer.

4. The Commissioner (Appeals) upheld the order of the original authority. Learned Advocate submits that there was no clandestine removal as held in respect of loose invoices and that they were only rough invoices. He submits that no duty is demandable on the packing and handling charges. In respect of red coloured book, he submits that the entire amount of Rs. 66,65,687/- recorded as sales in the ledger as relating to the period January, 2001 to August, 2001 is fully accounted and out of above amount, Rs. 43,13,825/- relates to sales from the manufacturing unit and Rs.22,09,361/- relates to sale from the trading unit from Kalkaji office. These submissions were made and tallied with work sheet before the original authority but the same have not been considered by the original authority. Therefore, he

submits that there is failure of principle of natural justice and the matter may be remanded to the original authority for considering the above submissions. He also submits that a sum of Rs. 3,87,944/- stands deposited ~~during the course of investigation and the~~ partly in the course of investigation and partly in pursuance of stay order of the Commissioner (Appeals) and the same amount is still with the Department and therefore, no prejudice would be caused to the Department.

5. Learned DR reiterates the finding of the Commissioner (Appeals).

6. I have carefully considered the submissions from both the sides. In para 7.6 of the show cause notice, it has been recorded that total value of clearance during the year 2001-2002 up to 1.9.2001 was Rs. 1,07,72,455/- whereas in para 8.3 of the show cause notice for the month of January, 2001 to August, 2001 the sales as reflected in the notebook ledger was recorded as Rs.66,65, 687/-. In other words, the total sales recorded for 8 months in Para 8.3 is lower than turn over recorded for the period of 5 months for April 2001 to August, 2001 in para 7.6.

7. In view of the above, the submissions of the learned Advocate that the sales figure of Rs.66,65,687/- represents partly the sales from the manufacturing unit and partly the sale of trading activity conducted from the Kalkaji office appears doubtful and requires reconciliation. The submission of the learned advocate is that the detailed statement of reconciliation of the sales figures in the ledger recovered from the factory has not been considered by the original authority in proper prospective. Perusal of the order does not indicate that this issue has been dealt with. In

view of the above, the matter requires fresh consideration by the lower authority and therefore, request of the learned advocate in this regard deserves acceptance.

8. Learned DR, in the light of the above discrepancy noticed, has no objection for remand of the order to the original authority.

9. In view of the above, I deem it appropriate to remand the matter to the original authority for fresh consideration. To enable the same, I set aside the impugned order of the Commissioner (Appeals) and the order of original authority and remand the matter for fresh consideration by the original authority. All issues are kept open. The appellant is permitted to make further written submissions within 45 days from the date of receipt of this order and thereafter the original authority shall decide the matter expeditiously and after affording reasonable opportunity of hearing to the appellant. I express no views on merits of the case.

10. Appeals are allowed by way of remand on the above terms.

(M. Veeraiyan)
Member(Technical)

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