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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/2061/2008 – SM [BR]** Date **21/04/2011**

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 OM GLASS WORKS PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 190 / 2011 –SM[BR]** dated 13.4.2011 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 OM GLASS WORKS PVT. LTD.
ADVANCE PURAM, RAJA KA
TAL, AGRA ROAD, FIROZABAD.

2. Adv. / Consult
NONE:----------------

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH

Excise Appeal No.E/2061/2008

(Arising out of Order-in-Appeal No.307-CE/APPL/KNP/2008 dt.28.8.2008 passed by the CCE (Appeals), Kanpur)

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

CCE, Kanpur — Appellants

Vs.

M/s.Om Glass Works Pvt.Ltd — Respondent

Present for the Appellant: Shri R.K.Gupta, SDR
Present for the Respondent: None

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

Date of Hearing/decision: 13.04.2011

Final **ORDER NO.** 190/2011 SM (BR)

PER: M.VEERAIYAN

This appeal is by the department against the order of the Commissioner (Appeals) No.307-CE/APPL/KNP/2008 dt.9.7.2008.

2. None appears for the respondents in spite of notice. On earlier occasions also none represented the respondents. Heard Learned SDR.

3. The factory premises of the respondents was visited on 17.6.2006 and shortage of 64 MT soda ash, a raw material, was noticed. Shri P.D. Gupta, Authorized Signatory stated that the short found goods were cleared from the factory premises without issuing any invoices and without payment of duty. Subsequently duty stands deposited. Show cause notice dt.6.6.2007 was issued proposing confirmation of duty of Rs.1,02,275/- and appropriation of the amount already paid and for imposing penalty. The original authority confirmed the demand and imposed penalty of equal amount. On appeal, the Commissioner (Appeals) set aside the order of the original authority except to the extending a nominal penalty of Rs.2,000/- for improper maintenance of accounts. Hence, the department is in appeal.

4. Learned SDR reiterates the grounds of appeal and draws my attention to the statement of the authorized signatory for the alleged clandestine removal of the goods.

5. I have carefully considered the submissions made by the learned SDR and perused the records. The show cause notice merely indicates shortage of 64 MT of soda ash without reference to the stock as per records and the stock which was physically available. The show cause notice has been issued ~~merely~~ nearly after a year. The respondents in the reply dated 26.9.2007 submitted that the show cause notice proceeded on an erroneous assumption as the issue of raw material during the certain period has not been taken into account. The original authority did not accept this contention. However, the Commissioner (Appeals) has given factual finding

that the inputs register was filled upto 31.5.2006 and RG-1 register was filled upto 7.6.2006. Issuing of inputs for producing the goods for the period from 1.6.2006 to 17.6.2006 has not been taken into account by the officer even though the production on the relevant date has been regularly shown by the respondents in the RG-1 register. Under these circumstances, the Commissioner (Appeals) has not accepted the finding of the original authority that there was clandestine removal. In the grounds of appeal, no material has been disclosed to dispute the factual finding given by the Commissioner (Appeals). It is also noticed that these submissions have been made before the original authority also. Inasmuch as it is not being disputed that there were production during the period form 1.6.2006 to 17.6.2006 and the raw material register was found filled upto 31.5.2006. The Commissioner (Appeals) has held that it was merely a case of improper accounting and sustained nominal penalty. I do not find any valid reason to interfere with the factual finding of the Commissioner (Appeals), which is based on interpretation of statutory records in preference to the statement of authorized signatory.

6. The appeal is, therefore, rejected.

Pronounced in the open court)

(M.VEERAIYAN)
MEMEBR (TECHNICAL)

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