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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/1367/2009 – SM[BR] **Date 27/12/2011**

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

To :
M/S ORIENT MICRO ABRASIVES LTD.
VILLAGE-LABHARI,P.O.-TURRA, PIPRI,DISTT.
SONEBHADRA (U.P.)
M/S ORIENT MICRO ABRASIVES LTD. Appellant
Vs
C.C.E ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 937 / 2011-SM[BR]** dated 11.11.2011 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 ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD

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. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

E/Appeal No.1367/2009-SM

(Arising out of order in appeal No. 13, 14/CE/Appl/Alld/09 dated 22.1.09 passed by the Commissioner of Customs & Central Excise, Allahabad)

Date of Hearing:11.11.2011

For Approval and signature:

Hon'ble Mr.Mathew John, Technical Member

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 would 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?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

M/s Orient Micro Abrasives Ltd — Appellants

Vs

CCE, Allahabad — Respondent

Appeared for the Appellant: None
Appeared for the Respondent: Smt. R. Jagdev, SDR

Coram: **Hon'ble Shri Mathew John, Member (Technical)**

Final ORDER - 937/2011 SM (BR)

Per Mathew John:

The appellant is a manufacturer of excisable goods and was availing benefits of Cenvat Credit Scheme. The appellant opted for availing exemption under Notification 08/2003-CE dated 01-03-2003, meant for small scale units with effect from 01-04-2005. As per Cenvat Credit Rules, 2004, the Cenvat credit available as balance on the date of opting for the exemption would lapse. However on scrutiny of ER-1 return of August 2005 filed by the assessee it was noticed that the appellant had utilized such amount. The matter was pointed out to the appellant, the appellant paid Rs. 2,41,696/- as duty and Rs. 34,039 as interest, on 02-05-2006 before issue of SCN on 16-06-06.

2. A Show Cause Notice dated 16-06-06 proposing to demand the duty short paid to the extent of Rs.1,82,811/- along with interest and for imposition of penalty under Rule 15 of the Cenvat Credit Rules read with section 11AC was issued. The matter was initially adjudicated by order dated 17-08-2007 confirming duty demand of Rs. 2,41,696/- and imposing penalty for equal amount. The appellant went in appeal to the Commissioner (Appeal) who set aside the adjudication order by appellate order dated 22-12-07 on the ground that the adjudicating authority travelled beyond the SCN in his order and remitted the matter to the adjudicating authority.

3. Subsequently a corrigendum to the SCN dated 11-01-08 was issued revising the amount to Rs. 5,68,111/-The matter was adjudicated confirming the duty demanded along with interest and also imposing penalty of Rs. 5,68,111/-. Aggrieved by this order the appellant filed appeal with Commissioner (Appeal). Commissioner (Appeal) by order dated 22-01-09, reduced the duty demand to Rs. 1,82,111/-which was the amount demanded in the SCN. Penalty was also reduced to this amount. Aggrieved by this order the appellant has filed this appeal.

4. The Counsel for the Appellant is not contesting the duty demand confirmed in the impugned order. He is only contesting the penalty. He submits that as on date he has paid more than the duty confirmed against him and interest and such payment was made even before issue of Show Cause Notice. So his contention is

that penalty imposed on him equal to the duty confirmed is not maintainable and the same should be set aside.

5. The Authorized Representative for Revenue argues that this is a case where the assesse has used Cenvat credit adopting dubious declarations and has benefitted to the extent of Rs.3,86,000/- because of some mistakes committed by Revenue while taking action for recovery of the amount so utilized by the Appellants. The duty demand got reduced even below the amount he originally paid voluntarily because of the mistake of the department and there is no case for reducing the penalty amount.

6. I have considered arguments on both sides. Notwithstanding the factual position as stated by the AR, the legal position is that as on date the appellant has paid more than the duty demand confirmed against the appellants. It is also clear that such payment was made before the issue of Show Cause Notice. So considering the legal position in this matter and also decision of the Honorable Delhi High Court in the case of K. P. Pouches Vs. UOI- 2008 (228) E.L.T. 31 (Del.), I find it proper to reduce the penalty amount to 25% of the duty confirmed against the appellant.

7. Thus the appeal is allowed partially.

(Pronounced in open Court)

(Mathew John)
Member(Technical)

MPS*