

**(2012) 03 AHC CK 0214****Allahabad High Court****Case No:** Central Excise Appeal No. 265 of 2012

Pioneer Glass Industries

APPELLANT

Vs

Commissioner of Central Excise

RESPONDENT

**Date of Decision:** March 23, 2012**Acts Referred:**

- Central Excises and Salt Act, 1944 - Section 35G

**Citation:** (2013) 293 ELT 351**Hon'ble Judges:** Prakash Krishna, J; Ashok Bhushan, J**Bench:** Division Bench**Advocate:** A.P. Mathur, for the Appellant; S.P. Kesarwani, Additional Chief Standing Counsel, for the Respondent**Final Decision:** Allowed**Judgement**

@JUDGMENTTAG-ORDER

- Heard Shri A.P. Mathur, learned counsel for the appellant and Shri S.P. Kesarwani, learned Additional Chief Standing Counsel appearing for the respondent. The appeal is admitted on the question as framed at page No. 14 of the memo of appeal.
- This appeal u/s 35G of the Central Excise Act, 1944 has been filed by the appellant challenging the order passed by the Tribunal on application for restoration of the appeal which had been disposed of vide Final Order No. 126/2011-SM(BR), dated 3-2-2011.
- An appeal was filed by the Department against the order of the Commissioner (Appeals), dated 24-3-2009. In the appeal a cross-objection was also filed by the appellant. Notice was issued to the appellant in the appeal which was returned with the endorsement of postal authorities "there is nobody in the factory". The Tribunal proceeded to decide the appeal on merits and allowed the appeal of the Revenue and disposed of the cross-objection of the appellant by the order dated 3-2-2011.

The appellant filed an application to recall the order of the Tribunal which has been rejected by the impugned order. The Tribunal while rejecting the application of the appellant has observed as follows in paragraph 4:

I have carefully considered the submissions from both the sides and perused the records. The records show that the notice had been sent to the respondent but the same had been returned back with the remarks that "there is nobody in the factory" implying that the factory is closed. Moreover, I also find that the respondent had filed a cross-objection in respect of the Revenue's appeal and while deciding this appeal, the submissions made in this cross objection had been considered. In view of this, I do not find any merit in this application and the same is dismissed.

4. The endorsement by the postal authority that "there is nobody in the factory" cannot tantamount to the refusal of the appellant nor that can be read as factory is closed as has been read by the Tribunal. The Tribunal ought to have taken fresh steps for service to the appellant in the manner prescribed under law.

5. The Tribunal committed error in rejecting the application of the appellant. Admittedly, the order was passed without hearing the appellant, hence we are satisfied that there was sufficient cause for recall of the order dated 3-2-2011 and hearing the Appeal Nos. E/1227/2009-SM and E/CO/192/2009-SM(BR) on merits afresh.

6. The order of the Tribunal dated 23-9-2011 is set aside and the restoration application of the appellant is allowed and the appeal as well as cross-objection is restored back before the Tribunal which may be heard afresh. With these observations, the appeal is allowed.