

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
LARGER MATTER NOTICE

Appeal No. : E/101/2011-EX[SM]

Name of the Appellant

1.

**MANGLAM CEMENT
LTD.,**
ADITYA NAGAR,
MORAK, DISTT. KOTA.

Name of the Respondent

2.

C.C.E. JAIPUR I
N.C.R.Building, Statue
Circle, "C" Scheme, jaipur
302005.

The issue involved in the matter is discussed in the Interim Order No.. **IO/71/2017-SM[BR]** dated **01/09/2017**.


The matter is now listed for hearing before **LARGER BENCH**.

You are hereby directed to make available 01 sets of appeals/complete paper book and forwarded them to the Tribunal well before the date of hearing.

Take notice that the Larger Bench case mentioned above has been fixed for hearing on **04/12/2017** at 10.30 AM or any subsequent date thereafter as per the cause list or as may be convenient to the Tribunal before CESTAT, West Block No.2, R.K. Puram, New Delhi.

Encl.: Copy of the Interim Order No.. IO/71/2017-SM[BR]
dated 01/09/2017.

Dated: 09/11/2017


Deputy/Asstt. Registrar
(SINGLE MEMBER Appeal
Branch)

Copy To:

1. Secretary, Bar Association, New Delhi,
2. Bar Associations MUMBAI/CHENNAI/KOLKATA/BANGLORE/AHAMDABAD/ALLAHABAD //CHANDIGARH/HYDRABAD.
3. S.D.R.
4. Advocate(s) / Consultant(s):

Bipin Garg
B-1/1289, A - Vasant
Kunj, NEW DELHI-
110070

5. Notice Board/CESTAT, website

6. Office Copy

27/9/17

FAX : 011-26108426

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
SINGLE MEMBER APPEAL BRANCH

Dated: 27/09/2017

To
Appellant as per address in table below
Respondent as per address in table below

Interim Order No. IO/71/2017-SM[BR] dated : 01/09/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

[Signature]
27/9/17
Asstt. Registrar(SINGLE MEMBER Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	E/101/2011	M/s. MANGLAM CEMENT LTD., ADITYA NAGAR, MORAK, DISTT. KOTA, RAJASTHAN

Application	Name and Address of Respondent
2	C.C.E. JAIPUR I N.C.R. Building, Statue Circle, "C" Scheme, Jaipur 302005

Copy To
3 Advocate(s) / Consultant(s):

MS. RINKI ARORA, ADV. C/o
Bipin Garg
B-1/1289, A - Vasant Kunj,
NEW DELHI-110070

- 4 Bar Association, CESTAT, Delhi
- 5 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence colony New Delhi-3
- 6 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
- 7 Director Publications, Customs, Excise. I.P. Estate, Delhi
- 8 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
- 9 MS Knowlegde Processing Pvt. Ltd.(Taxmanagementindia.com),FF-19, 1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
- 10 TaxIndiaOnline.com Pvt. Ltd., B-XI/8183, Vasant Kunj, New Delhi - 110070
- 11 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
- 12 The ICAFI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
- 13 C.D.R. 14 Office Copy 15 Guard File

[Signature]
27/9/17
Asstt. Registrar(SINGLE MEMBER Appeal Branch)

- 4 09 2017

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi - 110 066.

Date of Hearing/Decision: 1.9.2017

Appeal No. E/101/2011-SM

(Arising out of Order-in-Appeal No. 463(DKV)/CE/JPR-I/210 dated 29.10.2010
passed by the Commissioner (Appeals), Central Excise, Jaipur)

M/s Manglam Cement Ltd.

Appellant

Vs.

CCE, Jaipur

Respondent

Appearance

Ms. Rinky Arora, Advocate

- for the appellant

Shri G.R. Singh, A.R.

- for the respondent

CORAM: Hon'ble Mr. Ashok Jindal, Member (Judicial)

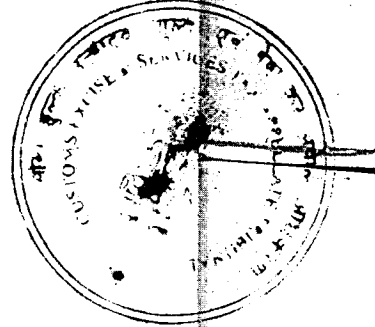
Interim Order No.

71/2017

Per Ashok Jindal :

The appellant has filed this appeal against the impugned order wherein Cenvat credit on Cement and steel bar has been denied on the premise that same did not qualify as input as per Rule 2(k) and capital goods as per Rule 2(a) of Cenvat Credit Rules, 2004 as these items have been used in the structural foundation to support the power plant which itself is embedded to earth.

2. The Id. Counsel for the appellant submits that this Tribunal in the case of M/s Prakash Industries Ltd. vide Final Order No. 56266/2017 dated 23.8.2017 has held that in the light of the



decision of the Hon'ble High Court of Madras in the case of *Dalmia Cements (Bharat) Ltd. Vs. CESTAT Chennai* - 2016 (341) ELT 102 (Madras) has held that any item used in the factory for installation and running of the factory are directly or indirectly used in manufacture of excisable goods. Therefore, the assessee is entitled to avail Cenvat credit thereon. In that circumstances, Cenvat credit is to be allowed.

3. On the other hand, Id. AR submits that in appellant's own case for the earlier period vide Final Order No. A/50309/2017-CU(SM) dated 12.1.2017, this Tribunal has disallowed the Cenvat credit to the appellant on the same items, relying on the decision in the case of *Vandana Global Ltd. Vs. CCE, Raipur*- 2010 (253) ELT 440 (Tri.-LB) and also relying on the Final Order of this Tribunal dated 27.12.2016.

4. Heard the parties.

5. Considering the fact that there are contrary view of this Tribunal on the issue whereas in the appellant's own case for the earlier period, this Tribunal relied on the decision in the case of *Vandana Global Ltd.* (supra) and held that the appellant is not entitled to avail Cenvat credit. I find that in the said case, the

appellant argued that in the light of the decision of the Hon'ble High Court of Gujarat in the case of *Mundra Ports & Special Economic Zone Ltd. Vs. CCE & Cus.* - 2015 (39) STR 70 (Guj.), wherein it has been held that no retrospective effect can be given to Explanation 2 to Rule (k) of Cenvat Credit Rules, but the said decision has not been considered by this Tribunal while deciding the issue on 12.1.2007 and disallowed the Cenvat credit. Further, I find that this Tribunal in the said case had not considered the decision of *Dalmia Cements (Bharat) Ltd.* (supra) which was decided on 28.8.2015.

6. Further, I find that this Tribunal relying on the decision of in the case of *M/s Prakash Industries Ltd.* (supra) allowed Cenvat credit on these items, relying on the decision of *Dalmia Cements* (supra).

7. In that circumstances, it would be appropriate when there is a divergent views of this Tribunal to refer the matter to the Larger Bench of this Tribunal.

8. Therefore, the file be placed before Hon'ble President to constitute a Larger Bench for a reference on the following issue:

"Whether on cement and steel items used for foundation for installation of machinery

which is embedded to earth, the assessee is entitled to avail Cenvat credit on steel items in terms of Rule 2(k)/2(a) of the Cenvat Credit Rules 2004, or not."

(Dictated & pronounced in open Court)

set

(Ashok Jindal)
Member (Judicial)

RM

Ashok Jindal 8/11/11
Member (Judicial)
Cenvat Credit Rules 2004
Section 2(k) & 2(a)