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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 06/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70016/2017-SM[BR] dated 03/01/2017

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.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/2207/2010	JAYPEE CEMENT PRODUCTS, (UNIT-JAIPRAKASH ASSOCIATES LTD.), SADVA KHURD, PARAGANA-ARAIL, TEHSIL:BARA, DISTT. ALLAHABAD.
		Name and Address of Respondent
2		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad

Copy To

3Advocate(s) / Consultant(s):

V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO SALES,Above the Office Of Blue Dart/DHL Courier, COLVIN ROAD, LOHIA MARG ALLAHABAD-211001

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

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-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy ~~16~~ Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/2207/2010-EX[SM]

(Arising out of Order-in-Appeal No. 98/CE/ALLD/2010 dated 30/03/2010 passed by Commissioner of Central Excise & Customs (Appeals), Allahabad)

M/s Jaypee Cement Products **Appellant**

Vs.

Commissioner of Central Excise, Allahabad **Respondent**

<u>Appearance:</u>

Shri Atul Gupta, Advocate. for Appellant
Shri D. K. Deb, Assistant Commissioner (AR). for Respondent

<u>CORAM:</u>

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 03/01/2017

FINAL ORDER NO. 70016/2017

Per: Anil G. Shakkarwar

The present appeal is filed by the appellants M/s Jaypee Cement Products against Order-in-Appeal No. 98/CE/ALLD/2010 dated 30/03/2010 passed by Commissioner of Central Excise & Customs (Appeals), Allahabad.

2. Brief facts of the case are that the appellants were engaged in the manufacture of Asbestos Cement Corrugated Sheets (A.C. Sheets) falling under Tariff Item No. 68000111 of the First Schedule to the Central Excise Tariff Act, 1985 and also attracting the Central Excise duty. They were also

availing Cenvat Credit facility. They were issued with a Show Cause Notice No. 41/Additional Commissioner/Alld./2007 dated 19/09/2007. It was alleged in the Show Cause Notice for the period from September, 2006 to March, 2007 that appellant availed inadmissible Cenvat credit amounting to Rs.23,31,409/- on 'inputs' in respect of items falling under Chapter 72 & 73 claiming that the same were neither 'input' nor 'capital goods'. Therefore, there was a proposal to disallow said Cenvat credit. There was another proposal in the said Show Cause Notice for disallowance of Cenvat credit of Rs.15,41,036/- in respect of 'Capital goods' which were alleged to be not qualifying the definition of capital goods. The said Show Cause Notice was adjudicated by Joint Commissioner through Order-in-Original No. MP (Dem-57/2007) 47 of 2008 30/10/2008. The appellants pleaded before the Original Authority that they reversed Cenvat credit of Rs.8,63,764/- towards steel items used in arrears other than manufacturing activities. They also contended before the Original Authority that the details of the items were submitted by them in the form of Annexure –G enclosed to reply to the said Show Cause Notice wherein they had given the location and place of installation and specific functions/use and in relation to final products in respect of items which was disputed by the department through the said Show Cause Notice and contended that in view of the definition of capital goods, the credit availed by them in respect of said capital goods included in Annexure - G was admissible. Further, the appellant also submitted the details in the form of Annexure – D to the reply to said Show Cause Notice where the details about the items falling under Chapter 72 & 73 ~~was~~ were given. The Original Authority did not appreciate the submissions before him and held in Sub-para (iii) of Para 6 of this Order-in-Original that there was no manufacture of any items or capital goods as the items so manufactured or assembled by the appellant were not capital goods as they did not find place in the first schedule to the Central Excise Tariff Act, 1985 and such items have no name or description in trade parlance. On the basis of such finding he confirmed the demand and did not give any finding on the amount which was claimed to have been reversed by the appellant. The appellant preferred appeal before Commissioner (Appeals) which was decided through Order-in-Appeal No. 98/CE/ALLD/2010 dated 30/03/2010. The ld. Commissioner (Appeals) upheld the Original-in-Original. Aggrieved by the said order appellant is before this Tribunal.

3. Heard the ld. Counsel for the appellants. He has submitted that in reply to the said Show Cause Notice through Annexure – D & Annexure – G the details required for adjudication were submitted to the Original Authority and that in spite of that Original Authority has held the capital goods manufactured out of items ~~as~~ on which cenvat was availed

did not have name or description for taking decision. The Original Authority also did not consider the debited entry in respect of Cenvat credit which was pleaded before him.

4. Heard the ld. D. R. who has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions and on perusal of the records I find that the details were submitted by the appellants before the Original Authority in the form of Annexure – D & Annexure – G to the reply dated 27/03/2008 to the said Show Cause Notice. I therefore remand the matter to the Original Authority with a direction to him to examine the submissions in form of Annexure – D & Annexure – G annexed to reply dated 27/03/2008 to the said Show Cause Notice and also take into consideration the submission before him that the credit of Rs.8,63,764/- was already reversed and decide the issue afresh after giving opportunity of hearing to the appellant. Thus, the appeal is allowed by way of remand.

(Dictated and pronounced in Court)

(Anil G. Shakkarwar)
Member (Technical)

Ansari

प्रमाणित प्रति / Certified True Copy
17.1.17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001