

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

Appeal No. E/113 /2005

Date 06/11/2007

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

To :
M/S J.K.CEMENT WORKS
KAILASH NAGAR, NIMBAHERA, DISTT:
CITTORGARH (RAJASTHAN)

M/S J.K.CEMENT WORKS

C.C.E. JAIPUR II

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 533/07-EX dated 18-10-07
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. JAIPUR II

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

2. Adv. / Consult

SH. K.K. ANAND, ADV.,
A-5, BASEMENT,
LAJPATNAGAR - III

3. S.D.R.

N. DELHI - 24

4. J.C.D.R.

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R. Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi


11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070.

14. Office Copy

15. Guard file


Assistant Registrar
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No.2, R.K. Puram, New Delhi-110066.
Principal Bench, New Delhi**

COURT NO. II

Excise Appeal No. 113 of 2005

[Arising out of the Order-in-Appeal No. 634-636 (RM)/CE/
JPR-II/2004 dated 06/10/2004 passed by The Commissioner
(Appeals-II), Central Excise, Jaipur.]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President

Hon'ble Mr. P. Karthikeyan, 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?
2. Whether it would be released under Rule 27 of :
the CESTAT (Procedure) Rules, 1982 for
publication in any authoritative report or not?
3. Whether their Lordships wish to see the fair :
copy of the order?
4. Whether order is to be circulated to the :
Department Authorities:

M/s J.K. Cement Works

Appellant

Versus

CCE, Jaipur

Respondent

Appearance

Shri K.K. Anand, Advocate - for the appellant.

Shri S.M. Tata, Authorized Representative (SDR) - for the
respondent.

CORAM: **Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Shri P. Karthikeyan, Member (Technical)

DATE OF HEARING : 18/10/2007.

Final Order No. 533/07EX Dated: 18-10-07

Per. S.S. Kang :-

Heard both sides. Appellant filed this appeal against the impugned order, whereby the benefit of credit in respect of capital goods used in mines was denied. We find that this issue is settled by the Hon'ble Supreme Court in the case of Vikram Cement vs. CCE, Indore as reported in 2006 (197) E.L.T. 145 (S.C.). The Hon'ble Supreme Court held as under:-

“5. As regards the Modvat/Cenvat credit on capital goods, if the mines are captive mines so that they constitute one integrated unit together with the concerned cement factory, Modvat/Cenvat credit on capital goods will be available to the assessee. On the other hand, if the mines are not captive mines but they supply to various other cement companies of different assessees, Modvat/Cenvat credit on capital goods used in such mines will not be available to the concerned

assessee under the appropriate Modvat/Cenvat Rules. The matters are remanded to the respective original authorities for decision only on the above issue.”

2. We find that the adjudication authority has not gone into the above factual aspect, therefore, the matter requires re-consideration by the adjudicating authority. The impugned order is set aside and matter is remanded to the adjudicating authority to decide afresh, In view of the decision of the Hon'ble Supreme Court and after affording an opportunity of hearing, the appeal is disposed of in way of remand.

(Dictated and pronounced in the open court)

(S.S. Kang)
Vice President

(P. Karthikeyan)
Member (Technical)

PK