

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

Appeal No. E/2339/2007  
E/S/1968/07

Date 22/10/2007

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

To :  
M/S ROYAL CEMENT COMPANY,  
PLOT NO 10-12, PHASE-3, INDL AREA, SANSARPUR  
TERRACE (DISTT. KANGRA)HP

M/S ROYAL CEMENT COMPANY.

Appellant

Vs

C.C.E. CHANDIGARH


STAY ORDER NO. 1014/07-EX. Respondent

I am directed to transmit herewith a certified copy of Final order No. 512/07-EX, dated 17-10-07  
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. CHANDIGARH  
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,  
CHANDIGARH 160017
2. Adv. / Consult  
MR. AJAY JAIN  
1293, SEC 18-C, CHANDIGARH - 18
3. C.D.R.  
~~4. I.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, NEW DELHI  
PRINCIPAL BENCH, NEW DELHI  
COURT NO. II

**Excise Stay Application No. 1968 of 2007 & Excise Appeal No.  
2339 of 2007**

(Arising out of Order-in-Appeal No. 153/CE/CHD/2007 dated 25.5.07 passed by  
the Commissioner of Central Excise, Chandigarh)

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 Departmental authorities.	

M/s Royal Cement Company

Appellant

Vs.

CCE, Chandigarh

Respondent

Appearance:

Shri Ajay Jain, Advocate

- For appellant

Shri C.S. Rajput, DR

- For respondent

CORAM:

HON'BLE MR. S.S. KANG, VICE PRESIDENT

HON'BLE MR. P. KARTHIKEYAN, MEMBER (TECHNICAL)

Date of Hearing: 17.10.07

Final Order No. 512/2007 EX ..... dated 17-10-2007  
STAY order No. 1014/2007 EX  
Per S.S. Kang :

Heard both sides.

2. The applicant filed this application for waiver of pre-deposit of duty of Rs.15,99,482/- and penalty of the equal amount. The demand was confirmed on the ground that the applicant wrongly availed the benefit of Notification No. 50/2003. The case of the Revenue is that applicant starting availing the benefit of this notification without filing necessary declaration. The Revenue is also relied upon the decision of the Hon'ble Supreme Court in the case of **M/s Eagle Flask Industries Vs. CCE** reported in 2004 (171) ELT 296.

3. The contention of the applicant is that when the notification was issued initially there was no such condition to file declaration. This condition was subsequently introduced in the notification. The contention of the applicant is also that the demand is time-barred as the show-cause notice was issued on 5.9.06 for the year 2004-05.

*Handwritten signature*

4. The contention of the applicant is also that in case the benefit of Modvat credit is allowed in respect of the credit on inputs used in the manufacture of goods, the demand comes to only approximately Rs. Four lakhs.

5. We find that in this case admitted facts are that the applicants started availing the benefit of notification without filing necessary declaration. In these circumstances, we find it is not a fit case for total waiver of duty. The applicants are directed to deposit an amount of Rs. Four lakhs within a period of six weeks. On deposit of the amount, the pre-deposit of remaining amount of duty and penalty is waived.

6. We find that the Commissioner (Appeals) dismissed the appeal for non-compliance to the provisions of Section 35F of Central Excise Act and had not decided the appeal on merits. In these circumstances, the impugned order is set aside and the matter is remanded to the Commissioner (Appeals) to decide the appeal on merits, on showing the deposit of Rs. Four lakhs, after

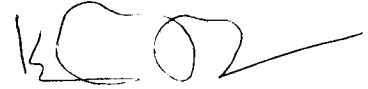
*Sumit*

affording an opportunity of hearing to the appellant. The appeal is disposed of by way of remand.

(Dictated & pronounced in open Court)



**(S.S. KANG)**  
**VICE PRESIDENT**



**(P. KARTHIKEYAN)**  
**MEMBER (TECHNICAL)**

RM