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

Appeal No. E/2983/2004 - 2984/04 Date 07/03/2008

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

To :
M/S MANGLAM CEMENT LTD.
MORAK DISTT.KOTA

M/S MANGLAM CEMENT LTD. Appellant

Vs

C.C.E.JAIPUR Respondent

I am directed to transmit herewith a certified copy of Final order No. 70 - 71/08 Excise dated 6-2-08

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
   N.C.R.B.STAUE CIRCLE C-SCHEME
2. Adv. / Consult SH. BIPIN GARG, ADV,
   B-1/1289-A, VISANT KUNS,
   N. DELHI - 70
3. S.D.R.
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 Publictions (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 Appeal No. 2983-2984 of 2004**

(Arising out of Order-in-Appeal No. 111-112(SN)CE/JPR-I/2004 dated 25.3.2004 passed by the Commissioner, 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?** | No |
| 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 Manglam Cement Ltd. — Appellant

Vs.

CCE, Jaipur — Respondent

Appearance:
Shri Bipin Garg, Advocate - For appellant
Shri S.M. Tata, SDR - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. P. KARTHIKEYAN, MEMBER (TECHNICAL)

Date of Hearing: 6.2.2008

Final Order No. 70-71/08 dated............

Per S.S. Kang::

Common issue in involved in these appeals, therefore, are being taken up together.

2. The appellant filed these appeals against the impugned order whereby credit in respect of LDO fuel and lubricants used in the generation of electricity was denied on the ground that part of electricity is supplied to the other units i.e. M/s Neer Shree Cement.

3. The contention of the appellant is that M/s Manglam Cement is engaged in the manufacture of cement and M/s Neer Shree Cement is owned by M/s Manglam Cement and the factory is situated on the same plot. The contention is that M/s Manglam Cement Ltd. is having DG sets and the power generated is used in the factory premises of M/s Manglam Cement as well as supplied to M/s Neer Shree Cement. The credit was denied on the ground that both are separate factories and separately registered with Central Excise. The appellant relied upon the decision of the Tribunal in the case of Diamond Cements Vs. CCE reported in 2004 (189) ELT 34, the contention of the appellant is that the Tribunal in similar situation in above case allowed the credit in respect of fuel used for generation of electricity supplied to sister concern. The appellant also submitted that subsequently the Revenue issued one

registration in respect of both. the factories and this fact specifically mentioned in reply to show-cause notice and not in dispute.

4. The contention of the Revenue is that during the relevant period both the units were separately registered with the Revenue authority. The Revenue relied upon the decision of the Tribunal in the case of Neer Shree Cement Vs. CCE reported in 2003 (161) ELT 418 where the Tribunal held that in respect of capital goods used in the premises of M/s Manglam Cement, M/s Neer Shree Cement cannot take credit. The contention of the Revenue is that as the appellant's own case, the Tribunal held that both are separate factories, therefore, in the present case also the demand of duty after denying credit in respect of the inputs used in the generation of power which was supplied to M/s Neer Shree Cement was rightly made.

5. We find that M/s Manglam Cement Ltd. is engaged in the manufacture of cement. Another unit which is situated on the same plot M/s Neer Shree Cement is also owned by M/s Manglam Cement are also engaged in the manufacture

of cement, DG sets are installed in the premises of M/s Manglam Cement Ltd. part of power generated is supplied to M/s Neer Shree Cement. The case law relied upon by the Revenue in appellant's own case is in respect of the capital goods. In that case M/s Neer Shree Cement wants to take credit in respect of capital goods which are used in the factory of M/s Manglam Cement. In these circumstances, the Tribunal held that capital goods which are not used in the factory of M/s Neer Shree Cement they cannot take credit. Further, we find that there is subsequent development that one single registration has been granted to both the units. In the present case, the dispute is in respect of the inputs used for generation of electricity which was used by both the units. As now single registration has been granted by the Revenue were both the factories, therefore, credit cannot be denied on the ground that both are separate registered with the Revenue. In similar situation, we find that the Tribunal in the case of Diamond Cements (supra) allowed the benefit of inputs used in the generation of power which was supplied to the sister unit. In view of the above, we find that denial of credit is not sustainable hence set aside. The appeals are allowed.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

(P. KARTHIKEYAN)
MEMBER (TECHNICAL)

RM