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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/2637/2004-2638, & 3719/04 Date 25/03/2008

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

To :
SHREE CEMENT LTD.
BANGUR NAGAR ANDHERI DEORI BEAWAR - 305901
RAJASTHAN

2. M/S. SHREECEMENT LTD.
BANGUR NAGAR,
BOST BOX NO. 33,
BEAWAR-305901 (RAJ)

SHREE CEMENT LTD. 7 ORS. Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No. 100-102** **2008 Excise** dated 29-2-08

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 II
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
   JAIPUR 302005.
2. Adv. / Consult SH. ABHISHEK, ADV.,
   PLAZA CINEMA BUILDING,
   CONNAUGHT CIRCUS, N. DELHI-1
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

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. I

Excise Appeal Nos. 2637, 2638 & 3719 of 2004
[Arising out of order in Appeal No. 133 (RM)CE/JPR-II/2004, 324/(RM) CE/JPR-II dated 31.5.2004 passed by the Commissioner of Central Excise (Appeals-II) Jaipur]

Date of Hearing/ Decision: 29.02.2008

For approval and signature:

Hon'ble Mr. S. S. Kang, Vice President
Hon'ble Mr. M. Veeraiyan, 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.	:	NO
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3. Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

M/s Shree Cement Limited — Appellant
[Rep. by Mr. Abhishek, Advocate]

Vs.

CCE, Jaipur-II — Respondent
[Rep. by Mr. A.N. Sharma, Jt. CDR]

CORAM: Hon'ble Mr. S. S. Kang, Vice President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final order No. 100-102/08-EX

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) dated 26.2.2004.

2. Heard both sides.

3. Relevant facts, in brief, are as follows:-

(a) The appellant cleared without payment of Central Excise duty 957.63 MT of cement during April 1999. The duty involved is Rs.3,35,171/-. The appellant claimed that they had earlier brought same quantity of damaged cement into their factory for reprocessing under Rule 96-ZV of erstwhile Central Excise Rules, 1944. They claimed that they were entitled to clear equal quantity of reprocessed cement duty free under Rule 96-ZV.

(b) The issue has been considered twice by the original authority and twice by the Commissioner (Appeals) and now the matter is before the Tribunal.

(c) The original authority has held that the procedure for receiving the damaged cement under rule 96ZV has not been correctly followed and that the test report relied upon by them did not indicate the exact quantum of cement that was recoverable and that the claim of the appellant that the entire quantity of damaged cement has been recovered was not believable and accordingly confirmed the demand of Rs.3,35,171/- and also imposed a penalty of Rs. 5,000/- on the appellant.

(d) Commissioner (Appeals) upheld the demand but reduced the penalty from Rs. 5,000/- to Rs. 1,000/-.

2. Learned Advocate for the appellant submits that they received damaged cement; subjected the same to the process of grinding in the

them. He also submits that the reliance placed by the Chemical Examiner on the tour note relating to some other cement company which dealt with "damaged (set) cement" is not relevant to their case. The Chemical Examiner in their case observed that the cement has setting properties, and the said observation should not be viewed as cement having already set.

3. Learned DR supports the decision of the Commissioner (Appeals). He submits that once the cement is set, the same is irreversible. He also submits that the claim regarding recovery of 100% of the damaged cement is unbelievable and hence not acceptable.

4. We have carefully considered the submissions from both sides. At the outset, we find that the tour note of the Deputy Chief Chemist dealt with damaged cement relating to another company. The Deputy Chief Chemist, in the said note, has specifically held that the damaged cement has already set. However, the Chemical Examiner in his report relating to the appellant has only mentioned that the cement has setting properties. This cannot be construed as meaning that the cement has already set and it cannot be reprocessed. The nature of reprocessing claimed by the appellant is feasible. If the damaged is mixed with good cement and subjected to grinding, as claimed by the appellant, then the claim of recovery of cent percent by weight of the damaged cement is possible. It is not denied that the original consignment has been cleared on payment

received for the purpose of reprocessing. We hold that the appellant is eligible for the benefit as envisaged under Rule 96-ZV.

5. In the light of the above, we allow the appeals with consequential relief.

(Operating part of the order pronounced in the open Court on 29.2.2008).

[S. S. Kang]
Vice President

[M. Veeraiyan]
Member (Technical)

[Pant]