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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/4932/2004-4934/2004 Date 08/08/2008

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

To :
C.C.E. INDORE
P.B.-10, MANIK BAGH PALACE, INDORE (M.P.)

C.C.E. INDORE Appellant

Vs

M/S SUVIDHA LTD. (CEMENT DIVISION) Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 571-573/08- **Excise** dated 5-8-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

M/S SUVIDHA LTD. (CEMENT DIVISION)
RAJGARH TEHSIL,
SARDARPUR DISTT. DHAR (M.P.)

2. Adv. / Consult

NONE

3. C.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

P.T.O. - 2

Assistant Registrar
(Excise Appeal Branch)

1 SHRI NIJAMUDDIN (E) INDOREWALA GENERAL MANAGER
15/MINIERRAVA INDUSTRIAL STATE, LBS MARG, MULUND (WEST) MUMBAI
2 SHRI R.S. PILLAI GENERAL MANAGER
C/O M/S SUVIDHA LTD., (CEMENT DIVISION) RAJGARH, KUKSHI ROAD, TEHSIL SARDARPUR, DISTT.DHAR (M.P.)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal Nos. 4932 to 4934 of 2004

[Arising out of Order-in-Appeal No. 476-478-CE/IND/APPL-I/03 dated 28.8.03 passed by Commissioner [Appeals-II] Customs & Central Excise, Indore]

Date of Hearing/decision : 18.7.2008

For approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
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?	NO
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

CC&CE, Indore — Appellant

Vs.

M/s Suvidha Limited — Respondents
Sh. Nijamuddin E. Indorewala, General Manager
Sh. R.S. Pillai, General Manager

Appearance:

Shri C.S. Rajput, DR for the Appellant
None for the respondent

CORAM: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final **ORDER NO.** 571-573/08-EX

Per M. Veeraiyan (for the Bench):

These three appeals are filed by the Department against the order of the Commissioner (Appeals) No. 476-478-CE/IND/APPL-I/03 dated 28.8.03.

2. Heard learned DR. None appeared on behalf of the respondents.

3. The relevant facts, in brief, are as follows:-

a) The Central Excise Officers visited the premises of the appellant company on 22.01.98 and found excess stock of 167 bags weighing 8.350 MT of cement; they also found certain private records and computer floppies which reportedly contained details of production, stock and clearance. Shri Nijamuddin E. Indorewala in his statement dated 23.01.98 admitted having cleared some unaccounted quantities of goods and agreed to pay the duty involved. However, the statement was retracted by a letter dated 27.01.98.

b) After further investigation, a show cause notice was issued. The original authority confiscated cement valued at Rs. 13,360/- but allowed the same on payment of redemption fine of Rs. 2,500/-. He also demanded duty of Rs. 1130,484/- on 5652.450 of cement said to have been cleared during the period from December 1995 to January 1998 and imposed equal penalty on the company. Penalty of Rs. 1 lakh was imposed on Sh. Nijamuddin E. Indorewala and Rs. 50,000/- on Shri R.S. Pillai.

c) On appeal by the parties, the Commissioner (Appeals) vide his order dated 28.08.2003 allowed the appeals.

4. Learned DR reiterated the findings and reasoning of the original authority. He submitted that the Commissioner was wrong in relying on the retraction given by Sh. Nijamuddin E. Indorewala. Commissioner ought to have relied on the documentary evidence recovered during the investigation and confirmed the order of the original authority.

5.1 We have carefully considered the submissions by the learned DR and also gone through the grounds of appeal. We have also perused the statement of Sh. Nijamuddin E. Indorewala and also the retraction letter given by the company.

5.2 The relevant portion of the finding of the Commissioner (Appeals) are reproduced.

> "08. As regards conclusion of Adjudicating Authority that appellant has wilfully evaded payment of duty on 5652.450 MT of cement cleared during the period 01.01.1997 to 21.01.1998 and 02.11.1996 and December 1995 totally amounting to Rs. 11,30,484/- confirmed in the impugned order, I find that the department relied on certain fax messages and statement of Sh. Nijamuddin E. Indorewala which was retracted later on and not by any corroborative evidence was proved the clandestine removal, the demand is not warranted because as per settled legal position, no demand can be raised for alleged removal of goods without any tangible/ corroborative evidence. I also find that the statements recorded by the CE officers were also retracted by them and the statements should have also been proved with corroborative evidences, due to lack of following corroborative evidences demand is not warranted as
>
> i) Show cause notice had not been able to adduce any evidence regarding the payment received by the appellants in respect of quantities alleged to have been supplied.
>
> ii) No evidence has been adduced regarding payment made by the buyers to the appellants. No corroborative evidence has been adduced so as to establish transportation by way of lorry receipts, octroi entry, payment made to transporter etc.
>
> iii) No evidence regarding receipt of raw material to produce the alleged excess quantity has been shown.
>
> iv) No evidence has been adduced in the show cause notice to establish the disposal of cement received by the buyers".

5.3. We find that demand has been raised relying on entries in computer floppy. We have not been shown that the said evidence was placed before the concerned official of the company for the purpose of enlisting their views/ defence. The respondent submitted that some of the entries related to orders received by them but not executed. The inference by the original authority that the unaccounted stock was kept for clandestine removal is not supported by any tangible evidence. Further, the crucial evidence namely the statement of Sh. Nijamuddin E. Indorewala stands retracted. The other private records do not get corroborated by any evidence i.e. from the buyers. The inference on clandestine removal has been based on scrutiny of the details gathered out of the floppy without testing the same through the person who maintained the said records. Under these circumstances, no valid grounds have been made out for interfering with the order of the Commissioner (Appeals).

6. Therefore, the appeals by the Department are rejected.

(Operative part of the order was pronounced in the open Court on 18.07.2008)

[Archana Wadhwa]
Member [Judicial]

[M. Veeraiyan]
Member [Technical]

[Pant]