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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/5043/2004 - EX[DB] Date 20/10/2008

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

To :
M/S CEMENT CORPORATION OF INDIA LTD.
NAYA GOAN MANDSOUR M.P

M/S CEMENT CORPORATION OF INDIA LTD. Appellant
Vs
C.C.E.INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 758/08-EX dated 27-8-08

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

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
C.C.E.INDORE
MANIK BAGH PALACE P.O.NO-10 INDORE M.P
452001
2. Adv. / Consult
~~MR.PRADEEP ASAWA~~ SH. GAURAV SRIVASTAVA, ADV.,
~~445-46, VIKRAM TOWER, 3 F~~ 6/39, JUNGPURA - B, N. DELHI-14
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 - 3
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), Thyagarayа Road, T. Nagar,Chennai
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-1
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Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II
Excise Appeal No. 5043 of 2004

[Arising out of the Order-in-Appeal No. 275-CE/Appeal-II/ Indore/2004 dated 28/06/2004 passed by The Commissioner (Appeals-II), Central Excise, Indore.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Rakesh Kumar, 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 Cement Corporation of India Ltd. Appellant

Versus

CCE, Indore Respondent

Appearance

Shri Gaurav Srivastava, Advocate – for the appellant.

Shri V. Choudhary, Authorized Representative (DR)– for the Respondent.

CORAM:**Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 27/08/2008.

Final Order No. 758/08-SC Dated : ____________

Per. S.S. Kang :-

Heard both sides. Appellant filed this appeal against the impugned order, whereby refund claim filed under Rule 173L of Central Excise Rules was rejected.

2. The appellant are engaged in the manufacture of cement. A consignment of cement was cleared from Ratlam factory on payment of duty. Part of the consignment was rejected by the customers and appellant received the same in their factory at Charkhi Dadri. The case of the appellant is that as the duty paid goods were received in factory and were reprocessed, therefore, they are entitled for the refund under Rule 173L of the Central Excise Rules. The contention of revenue is that goods were cleared from Ratlam factory which were received back in Charkhi Dadri factory and goods were never reprocessed. The appellant wrote letter requesting to

Proper Officer that they are unable to reprocessed the goods at Charkhi Dadri factory and made a request to remove the same quantity of cement from other factory. The contention is that as the duty paid goods received in the factory are not reprocessed, therefore, are not entitled for the refund.

3. For ready reference, the provisions of Rule 173L of Central Excise Rules is reproduced below :-

> **RULE 173L – Refund of duty on goods returned to factory** – (1) The Collector may grant refund of the duty paid on manufactured excisable goods issued for home consumption from a factory, which are returned to the same or any other factory for being re-made, refined, reconditioned or subjected to any other similar process in the factory :
>
> Provided that –
>
> (i) such goods are returned to the factory within one year of the date of payment of duty or within such further period or periods not exceeding one year, in the aggregate, as the Collector may, on sufficient cause being shown, permit in any particular case ;
>
> (ii) the assessee gives information of the re-entry of each consignment of such excisable goods into the factory to the

proper officer in writing in the proper form within twenty-four hours of such re-entry [or within such further period not exceeding ten days, as the Collector may, on sufficient cause being shown, permit in any particular case,] [to enable the proper officer to verify the particulars of such goods within forty-eight hours of receipt of the information];

(iii) the assessee stores the said goods separately pending their being remade, refined, reconditioned or subjected to any other similar process in the factory unless otherwise permitted by the Collector by an order in writing and makes such goods available for inspection by the proper officer when so required ;

(iv) the amount of refund payable shall in no case be in excess of the duty payable on such goods after being remade, refined, re-conditioned or subjected to any other similar process in the factory :

[Provided further that in relation to the declared excisable goods, for clause (ii) of the first proviso, the following clause shall be substituted, namely :-

> "(ii) the assessee gives information of the re-entry of each consignment of such excisable goods into the factory to the proper officer in writing in the proper form within twenty-four hours of such re-entry [or within such further period not exceeding ten days, as the Collector may, on sufficient cause being shown, permit in any particular case].}

(2) The assessee shall maintain a detailed account of the returned goods and the processes to which they are subjected, after their return to the factory in the proper form.

(3) No refund under sub-rule (1) shall be paid until the processes mentioned therein, have been completed and an account under sub-rule (2) having been rendered to the satisfaction of the Collector within six months of the return of the goods to the factory.

4. The rule provides that the Collector may refund the duty paid on manufacture of excisable goods which are returned to same or any other factory or subjected to any other similar process in the factory. In the present case, we find that as per the letter dated 24th January 1995 written by Manager (Finance) Mr. M.C. Roy to the Collector of Central Excise, the duty paid cement received in the factory at Charkhi Dadri was not reprocessed and the appellant seeks permission to

clear the same quantity from their other unit. In view of the fact that the returned goods were not reprocessed, therefore, we find no infirmity in the impugned order. The appeal is dismissed.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK