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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/4657/2004,4666/2004 Date 27/08/2008

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

To :
M/S PRISM CEMENT LTD.
VILL.- MANLAHARI, TEHSIL-RAMPUR BAGHELAN,
DISTT. SATNA (M.P.)
M/S PRISM CEMENT LTD. Appellant
Vs
C.C.E. BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No632-633/08-**. **Excise** dated 18-8-08

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. BHOPAL
48, ADMINISTRATIVE AREA, AREA HILLS, HOSHANGABAD ROAD, BHOPAL
2. Adv. / Consult
MR.SANJAY GROVER
LAW OFFICES, E-500, GREATER KAILASH-II, NEW DELHI-110 048.
3. S.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

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, COURT NO.1 NEW DELHI

Excise Appeal No. 4657 & 4666/04-EX(BR)

(Arising out of order in appeal No. 212-213/CE/BPL/2004 dated 19.7.2004 passed by the Commissioner of Customs & Central Excise(Appeals), Bhopal)

Hon'ble Mr. M. Veeraiyan, Member(Technical)
Hon'ble Mr. D.N. Panda, Member(Judicial)

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

M/s Prism Cement Ltd .... Appellants
(Rep.by Shri Sanjay Grover, Advocate)

Vs

CCE, Bhopal Respondents
(Rep. by Shri V. Chaudhary, Jt. CDR)

Coram: Hon'ble Mr. M. Veeraiyan, Member(Technical)
Hon'ble Mr. D.N. Panda, Member(Judicial)

Date of Hearing: 23.7.2008

Per M. Veeraiyan: FINAL ORDER NO. 632-33/08-EX

These two appeals arise out of a common order of the Commissioner (Appeals) dated 19.7.2004. The dispute involved in both the appeals is the same. Therefore, they are being dealt with by a common order.

2. Heard both parties.

3. The appellant is engaged in the manufacture of cement and cement clinkers. They have a workshop for undertaking certain repairs and maintenance. The repairing work involves making required size holes on the iron pieces, shaping of iron sheets to the required size etc. In the course of the above work, certain quantity of MS turning, boring scrap has arisen,. The original authority as well as Commissioner (Appeals) have held that the said waste and scrap have arisen during the course of mechanical working of metal and hence was excisable. For coming to such conclusion, he has relied on section note 5(a) of Section XV of Central Excise & Tariff Act, 1985.

4. The learned Advocate submits that they are not engaged in manufacture of any plant or equipment or any products of iron and steel but only undertake activity of repairs and maintenance. They use MS. Steel, Angels, Channels, Plates, Flats, Beams, Rods and Sheets for such repair and maintenance activity. They have also not taken any credit on such items used for repair and maintenance. Therefore, he submits that the appeals are to be allowed. The learned Counsel relies on the following decisions in support of his contentions:

Hindalco Industries Vs CCE Allahabad
2002(144) ELT 339) Tri.Del)

Gujarat Ambuja Cemnts Ltd Vs CCE Rajkot
2004 (163) ELT 399 (Tri. Del)

Deepak Fertilizers & Petochem Corp Ltd Vs CCE, Mumbai II
2004 (174) ELT 468 (Tri. Mumbai)

Rashtriya Ispat Nigam Ltd Vs CCE, Visakhapatnam
2005 (184) ELT 57 (Tri. Bang.)

H.E.G. Ltd Vs CCE, Bhopal
2005 (191) ELT 1199 (Tri.Del.)

CCE, Visakhapatnam-I Vs Vamsadhara Paper Mills Ltd
2005 (192) ELT 342 (Tri. Bang.)

Zuari Cement Ltd (ZCL) Vs. CCE, Tirupati
2007 (210) ELT 219 (Tri. Bang.)

5. The learned DR reiterates the findings and reasoning of the Commissioner(Appeals).

6. We have carefully considered the submissions from both the sides. The appellant is not involved in the manufacture of iron and steel products but only in maintenance and repair work. Further it is not disputed that no credit has been taken on the items used in such repair and maintenance. Therefore, we hold that no duty is liable on MS scrap, borings, turnings, etc. generated by them in maintenance and repair work.

7. Appeals are allowed with consequential relief.

(Operative part of the order pronounced in the open Court).

(M. Veeraiyan)
Member(Technical)

(D.N. Panda)
Member(Judicial)

MPS*