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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

Date 10/11/2008

Appeal No. E/5206/2004 - EX[DB]

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

To :
M/S DIAMOND CEMENT-II
BIRLAPUR P.O. NARSINGARH,DISTT.DAMOH(M.P)

M/S DIAMOND CEMENT-II — Appellant

Vs

C.C.E. BHOPAL — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 844/2008-**EX[DB]** dated 04-9-08

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.V.LAKSHMI KUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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), Thyagarava 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-110066.**
**Principal Bench, New Delhi.**

**E/5206/04**

[Arising out of Order-in-Appeal No.221-CE/BPL/2004 dt.20.7.04 passed by the Commissioner(Appeals), Bhopal)

For approval and signature:

Hon'ble Mr. S.S.KANG, VICE PRESIDENT
Hon'ble Mr. 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. Diamond Cement — Appellant

Versus

CCE, Bhopal — Respondent

Appearance

Shri Ravi Raghvan, Adv. For appellant
Shri B.S.Suhag, Authorised Departmental Representative(DR) For respondent

Coram: Hon'ble Mr. S.S.KANG, VICE PRESIDENT
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

Date of hearing: 4.9.08
Final Order No. 844/08-EX

Per S.S.Kang:

Heard both sides. The appellant filed this appeal against the impugned order whereby demand of Rs.12,46,522/- was confirmed and penalty was imposed. The appellant is engaged in the manufacture of cement and clinker and having two units, one is at Narsingarh and another is at Imlai. In Feb'01, the Narsingarh unit was to pay duty of Rs.39 lakhs through PLA and the other unit was to pay Rs.27 lakhs through PLA. The appellant filed necessary TR.6 challan relating to Narsingarh unit and deposited the duty in the account of Imlai and vice versa. The revenue's case is that where the appellant paid excess duty, the appellant can ask for refund and where the less duty has been paid, the appellant requires to be paid the differential duty.

2. The contention of the appellant is that it was due to mistake the amounts were deposited in different account and Imlai unit has paid duty in excess to their liability which is equal to the differential duty against the second unit. The appellant also produced the necessary ~~certain~~ evidence which is after verification from PLA account. The appellant also submitted that they undertake not to file any refund in respect of excess duty paid in Imlai unit.

3. The contention of the revenue is that where the duty in excess has been paid, the applicant has to file refund and where the duty has been

paid short, the appellant was liable to pay differential duty as per the impugned order.

4. We find that in this case excess duty has been paid in one unit which is equvilent to the differential duty demanded in respect of the second unit. Both the units belong to the same manufacturer. The appellant explained the reasons by mistake in deposit excess duty in one unit and less duty in another unit. We find the duty paid in excess in one unit is to be adjusted against the deemed differential duty and against the other unit of the assessee. In view of this, the impugned order is set aside and appeal is allowed as indicated above. The appellants are not entitled for refund of duty paid in excess in Imlai unit.

Order dictated in the open Court.

(S.S.Kang)
Vice President

(Rakesh Kumar)
Member Technical

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