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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/2025/2008 - EX[DB] & E/S/1977/08 Date 24/10/2008

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

To :
M/S AMBUJA CEMENT LTD.
(UNIT-DARLAGHAT) VILLAGE-SULI, POST OFFICE-DARLAGHAT, DISTRICT SOLAN HIMACHAL PRADESH.

M/S AMBUJA CEMENT LTD. Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 819/08& S.O.NO.1121/08- **EX[DB]** dated 21-10-08 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. CHANDIGARH

C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017

2. Adv. / Consult SH, B.L. NARASIMHAN, ADV.,
B-6/10, S.J. ENCLAVE,
N. DELHI-29

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 - 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). Thyagaraya 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
15 Office Copy
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Assistant Registrar

(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:21.10.2008

Stay Application No.1977 of 2008 in Central Excise Appeal No.2025 of 2008

Arising out of the order in appeal No.345/CE/CHD/2008 dated 4.7.08 passed by the Commissioner (Appeals), Central Excise, Chandigarh.

For Approval and Signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter 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 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

Appellant/applicant		Respondent
Ambuja Cement Limited	vs.	C.C.E., Chandigarh

Appearance:

Shri B.L. Narasimhan, Advocate for the appellant
Shri Amit Jain, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

STAY Order No. 1121/08-EX
FINAL ORDER NO 819/08-EX

Per M. Veeraiyan:

Heard both sides for a while on the stay petition.

2. This is an appeal against the order of the Commissioner (Appeals) No. 345/CE/CHD/2008 dated 4.7.08 by which he dismissed the appeal against the order of the original authority dated 22.11.06 on the short ground that the condition of the Stay Order was not complied with. As the issue involved is a simple one, we waive the pre-

deposit of the dues as per the impugned order and proceed finally to dispose of the appeal.

3. There was a dispute about dutiability of clinker used by them in the manufacture of cement and the issue has been decided by the Tribunal against the appellant. The duty involved amounting to Rs.9 crores relating to the period June, 2005 to September 2005 stands paid by the appellant on 3rd October, 2005. It is also submitted that the appellant has filed appeal against the said decision before the Hon'ble Supreme Court and the matter is yet to be decided.

4. The present dispute relates to the order of recovery of interest on the demand mentioned above. The original authority apart from confirming the order of recovery of interest of Rs.16,46,831/- under Section 11AB of the Central Excise Act, 1944, imposed a penalty of Rs.15 lakhs under Rule 25 of the Central Excise Rules, 2002. The Commissioner (Appeals) directed the appellant to pre-deposit an amount of Rs.10 lakhs towards penalty which has not been complied with by the appellant and on the said ground, the appeal stands dismissed. In other words, the appeal has not been decided by the Commissioner (Appeals) on merits.

5. In this particular case, the dispute relates to the order for recovery of interest relating to the confirmed demand which is in appeal before the Supreme Court. According to the appellant, the duty itself is not payable. On this point, we need not offer any comment as the Tribunal has already decided the matter. It was also submitted that penalty cannot be imposed for non-payment of interest.This issue also has not been decided by the Commissioner (Appeals) on merits. We are of the considered view, that in the facts and circumstances of the case, the dismissal of the appeal for non-compliance of the amount to be deposited under Section 35 F may not be appropriate. In the interest of justice, we deem it proper to set aside the order of the Commissioner (Appeals) and remand the matter to him for considering the appeal on merits without insisting on any pre-deposit

of the interest and the penalty as per the order of the original authority. We express no views on the merits of the case.

6. The appeal is allowed by way of remand. Stay petition also is disposed of.

(Dictated and pronounced in the open Court)

(Justice S.N.Jha)
President

(M. Veeraiyan)
Member (Technical)

scd/