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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/5570/2004 - EX[DB] Date 22/01/2009

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

To :
M/S THE ASSOCIATED CEMENT COMPANIES LTD.
KYMORE CEMENT WORKS DISTT.KATNI,KYMORE
M.P

M/S THE ASSOCIATED CEMENT COMPANIES LTD. Appellant

Vs

C.C.E.BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No. 60/2009-EX[DB]** dated 16-1-09 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
   178,BHAGYA BHAWAN,ZONE-II,M.P.NAGAR BHOPAL
2. Adv. / Consult SH. BIPIN GARG, ADV., B-1/1289-A, VASANT KUNJ, N. DELHI-70
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-15
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Appeal No. 5570 of 2004-Ex.

(Arising out of Order-in-Appeal No. 606/CE/BPL/2004 dated 17.8.2004 passed by the Commissioner (Appeals), Central Excise & Customs, Bhopal)

M/s The Associated Cement Companies Ltd. — Appellant

Vs.

CCE, Bhopal — Respondent

Appeared for Appellant : Shri Bipin Garg, Advocate
Appeared for Respondent : Shri C.S. Rajput, DR

Date of Hearing: 15.1.2009

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER
HON'BLE MR. RAKESH KUMAR, TECHNICAL MEMBER

FINAL Order No. 60/09-EX dated............

Per D.N. Panda:

Ld. counsel Shri Bipin Garg submits that the department has disallowed Cenvat credit on certain capital goods because the declarations were filed belatedly. Revenue's contention is that there is no discretion to condone the delay disallowance justified. Shri Garg draws our attention to judgment of the Hon'ble High Court of Punjab & Haryana in the case of **CCE Vs. A.B. Card Clothing (Pvt.) Ltd.** reported in 2008 (222) ELT 359 and argues that after insertion of sub-rule (2) ~~of~~ to Rule 57T, Tribunal has already taken a decision in **Hindustan Papers** case reported in 2007 (212) ELT 156 to condone the delay and allow the effective grant of law. He relies on Circular No.441/7/99-CX dated 23.2.99 and submits that the amended rule shall be applied to pending cases. We are satisfied that the appellant is governed by the circular and the cited decision, Accordingly we allow relief to the appellant.

2. The second plank of argument is that certain items were not considered to be capital goods. He relies on the judgment of Apex Court in the case of **CCE Vs. Jawahar Mills Ltd**. reported in 2001 (132) ELT 3 (SC). He submits that when Revenue has not made a contrary finding that the goods were not used for the purpose of manufacture, the appellant cannot be denied benefits. He relies on para-6 of the judgment and supports his argument. Ld. DR submits that Larger Bench decision of the Tribunal in the case of **CCE Vs. Surya Roshni Ltd.** reported in 2001 (128) ELT 293 does not entitle him to the benefit. To resolve this controversy, we have gone through Rule 57Q, The beginning phraseology itself says that the benefit shall be granted to certain specified industries listed in the annexure under that rule. There is no quarrel that the appellant is governed by an entry under that annexure. Therefore, when the appellant is manufacturing the goods as specified in annexure, the judgment of the apex Court in **Jawhar Mills** grants him relief in

absence of any finding by the department that the goods in question were not used for manufacture. We are satisfied that the appellant is entitled to the benefit following the apex Court's decision. Accordingly, the appeal is allowed on both the counts. In view of above decision, the relief denied under para 4(i) and (ii) by ld. Commissioner (Appeals) is reversed. The appellant shall get appropriate ~~relied~~ relief in respect of these two issues so far as duty, penalty and interest are concerned.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM