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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/4745/2004 - EX[DB] Date 26/05/2009

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

To :
C.C.E. JAIPUR-II
NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR

C.C.E. JAIPUR-II Appellant
Vs
M/S J.K. CEMENT WORKS Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 367/2009-EX **EX[DB]** dated 11-5-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

**Copy to :**
1. Respondent
M/S J.K. CEMENT WORKS
NIMBAHERA, CHITTORGARH
2. Adv. / Consult
MR.K.K ANAND
A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
3 C.D.R
~~4 I.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file
18. HON'BLE PRESIDENT.

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: 11.05.2009

**Excise Appeal No. 4745 of 2004**

[Arising out of order-in-appeal No. 333 (RM)CE/JPR-II/2004 dated 10.6.2004 passed by the Commissioner (Appeals-II) Customs & Central Excise, Jaipur]

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, 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. | 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 |

CCE, Jaipur-II — Appellant

Vs.

M/s J.K. Cement Works — Respondent

Appearance:

Appeared for the Appellant – Shri S.N. Srivastava, DR
Appeared for the Respondent – Ms. Asmita Nayak, Advocate

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

FINAL Oral Order No. 367 / 09 – EX

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) setting aside the order of the original authority by which he ordered recovery of Rs. 51,952/- and imposed equal penalty.

2. Heard both sides.

3. The respondent is a manufacturer of clinker and cement and they have procured various capital goods and inputs for the manufacture of the said final product. During the period December 1998 to December 1999, they have sold waste and scrap of capital goods/inputs valued at Rs.3,13,157/-. The original authority held that excise duty of Rs. 51952/- was payable under rule 57S(2)(c) of the Central Excise Rules on such waste and scrap. He also imposed equal amount of penalty under Section 11AC. Commissioner (Appeals) noted the disputed items as burnt oil drums, scrap of rubber belt and cable & PVC scrap, fire bricks scrap, steel scrap, weigh bridge scrap and old bearing scrap. He has discussed the excisability of each item independently and allowed the appeal of the party. In particular he held that clearance of burnt oil drums (empty drums) cannot be treated as clearance of capital goods as the goods received were only oil in those drums. He has also held that scrap of burnt oil bricks cannot be held to be a manufactured product. He also accepted the submission of the respondent that they have not availed credit on the capital goods out of which the said waste and scrap has arisen.

4. Learned DR reiterates the grounds of appeal and drew our attention to the admission of Shri K.M. Jain of the respondent company that the respondent was not maintaining separate accounts in respect of capital goods on which modvat credit was taken and those on which modvat credit was not taken.

5. Learned Advocate for the respondent submits that the statement of Shri K.M. Jain that they were not maintaining separate account for capital goods on which cenvat credit was taken has been misunderstood. There are entries in cenvat registers made from time to time and therefore there is account of capital goods on which credit was taken. She submits that the learned Commissioner

(Appeals) held that there was no evidence of any modvat credit taken in respect of any of the capital goods out of which waste has arisen. The Department has not produced any reliable evidence to contradict the finding of the Commissioner (Appeals). Under these circumstances, we do not find any reason to interfere with the order of the Commissioner (Appeals).

6. The appeal by the Department is therefore rejected.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

/Pant/