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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/5252/2004 - EX[DB]
&E/CROSS-OBJECTION NO.28/2009-EX

Date 16/07/2009

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

To :
C.C.E. DELHI-III. GURGAON
UDYOG VIHAR UDYOG MINAR, VANIJYA NIKUNJ,
PHASE V,GURGAON
C.C.E. DELHI-III. GURGAON — Appellant

Vs

M/S R.C.C. CEMENTS LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 466/2009- **EX[DB]** dated 06-7-09

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 R.C.C. CEMENTS LTD.
   VILL.SUNARI, SUB TEHSIL TARUR DIST GURGAON,HARYANA
2. Adv. / Consult SH. RAJESH JAIN, ADV., A-2/142, S. J. ENCLAVE, N. DELHI-29
3. C.D.R
4. ~~J.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: 6.7.2009

Central Excise Appeal No.5252 of 2004 and Cross-Objection No.28 of 2009

Arising out of the order in appeal No.267/AKG/GGN/2004 dated 15.7.2004 passed by the Commissioner (Appeals), Central Excise. Gurgaon

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri 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?	Yes
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

C.C.E., Delhi III .... Appellant

Vs.

M/s R.C.C. Cement Ltd. ..... Respondent

Appearance:

Shri Isthikhar Baig, Authorized Departmental Representative (DR) for the Revenue and Shri Rajesh Jain, Advocate for the respondent

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

FINAL Oral Order No. 966/09-EX

Per Mr. M. Veeraiyan:

Appeal No.E/5252/04 is by the Department against the order of Commissioner (Appeals) No.267/AKG/GGN/2004 dated 15.7.04 and Cross-Objection No.28/09 is filed by the respondent in connection with said appeal.

2. The relevant facts are that the respondent is a manufacturer of cement using clinkers produced in their factory as well as clinkers bought out from

the third parties. In respect of clinkers bought out from third parties they have taken modvat credit. In respect of cement manufactured using clinkers produced within the factory, duty payable, during the relevant period was Rs.200 P.M.T. and in respect of cement manufactured ~~during~~ using clinkers bought out , the rate of duty was Rs.350 PMT. During the said period 1.4.96 to 21.8.97, the respondent paid the lower rate of Rs.250 PMT even in respect of cement manufactured using clinkers bought out from third parties. Deputy Commissioner issued show cause notice dated 17.2.98 proposing demand of duty without invoking the proviso to Section 11A and the said show cause notice was later withdrawn. On the same set of facts, show cause notice dated 11.5.99 has been issued invoking the proviso to Section 11A.

3. The original authority confirmed the demand and imposed equal penalty under Section 11AC. Commissioner (Appeals) while confirming the duty demand set aside the penalty imposed. The Department is on appeal seeking restoration of penalty imposed on the party. Party in cross-objection is challenging the demand of duty.

4. Learned Advocate for the respondents submits that inasmuch as the show cause notice dated 17.2.98 invoking normal period of limitation has been issued, the question of issuing another notice dated 11.5.99 invoking extended period of limitation under the proviso of Section 11A does not arise. He submits that the appeal by the Department is to be rejected on this short ground and cross-objection requires to be allowed.

5. Learned DR submits that the party has mentioned in declaration filed under 173B to both the varieties of the cement. While clearing the cement manufactured using clinkers bought out from third parties, though choose to pay at lower rate of duty applicable to cement manufactured using clinkers produced within the factory. He submits that this is a clear case of suppression of relevant facts within intent to evade duty and therefore, the order of the Commissioner (Appeals) should be modified and the order of the original authority be restored.

6. We have carefully considered the submissions from both sides. The party has intimated the manufacture of cement using clinkers produced by them and using clinkers bought out from the third parties. It is not disputed that the party has taken modvat credit of duty on clinkers purchased from third parties and that the departmental officers have defaced the duty paying documents. It is not disputed that the assessing officers were given RT-12 returns and copies of RG-23 Part II. Under these circumstances, the submission of the learned DR that there was suppression of relevant facts to the authorities by the party is not acceptable. Therefore, the show cause notice in this case could have been issued only invoking the normal period of limitation. As the show cause notice dated 17.2.98 has been withdrawn, the subsequent issue of show cause notice dated 11.5.99 on the same set of facts is clearly not justified.

7. Therefore, we allow the cross-objection of the party with consequential relief as per law and consequently reject the appeal by the Department.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

scd/