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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/24 /2006 - EX[DB] Date 19/11/2009

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.
C.C.E. RAIPUR

Appellant
Vs
Respondent

M/S BHILAI CEMENT

I am directed to transmit herewith a certified copy of **Final order No. 1255/ 2009 EX[DB]** dated 18-11-09 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 BHILAI CEMENT
8,CIVIL CENTER BHILAI CHATTISGARH
2. Adv. / Consult SH. BIPIN GARG, ADV.,
B-1/1289-A, VASANTKUNJ,
N. DELHI-70
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
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Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.E/24 of 2006-Excise Branch

[Arising out of Order-in-Appeal No.44/RPR-II/2005 dated 10.08.2005 passed by the Commissioner of Central Excise (Appeals-II), Raipur]

Date of Hearing/ Decision:04.11.2009

CCE, Raipur (C.G.) ...Appellant
(Rep. by Shri S.R. Meena, SDR)

Vs.

Bhilai Cement ....Respondent
(Rep. by Shri Bipin Garg, Advocate)

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**
Hon'ble Mr. D.N. Panda, Member (Judicial)

FINAL Order No./1255/09-EX/Dated:04.11.2009

Per D.N. Panda:

Revenue came in appeal being aggrieved by the Order dated 8.08.2005 passed by the ld. Commissioner (Appeals) holding that the respondent had not carried out any manufacturing activities and they had also informed Revenue about their processes and activities carried out way back in 1993 and the adjudication was time barred.

2. Ld. DR appearing on behalf of the Revenue submits that the respondent had carried out manufacturing activities in view of the observations made by the ld. Adjudicating Authority in his order. But holding otherwise by the ld. Commissioner (Appeals) is un-reasonable. He supports adjudication and prays for restoration of the same.

3. Ld. Counsel on behalf of the respondent submits that the excise demand relating to the year 1992-93 is Rs.55,067/- and the demand for the year 1993-94 is Rs.7,77,083/-. He supports orders of the ld. Commissioner (Appeals) to submit that ld. Commissioner has examined various activities carried out by the respondent and came to a conclusion that no manufacturing activity was carried out by the respondent. According to him when the process carried out by the respondent was made known to the Department for the year 1991-92 in terms of acknowledgement issued on 5.4.91 and similar process followed for the year 1993-94 in terms of acknowledgement dated 8.4.93, adjudications made are time barred. He brings out to our notice that show cause notice for the period 1992-93 was issued on 15.1.98 and for the year 1993-94, a show cause notice was issued on 26.10.98. When the show cause notices were issued, the process and activity carried out by respondents was well known to the Authorities as early as in 1991-92. But, he has no evidence to show acknowledgement if any issued by the Department in respect of the year 1992-93 to the effect of declaration of the process carried out during that year.

4. Heard both sides and perused the records for sometime.

5. We have noticed that the process carried out by the appellant gave rise to finished goods. But, without looking into merits of the matter in detail the evidence relating to time bar of the proceeding produced by the

respondent shows that Department was aware of the nature and the process of activity carried out by respondent from the year 1991-92 (except the year 1993, for which no evidence was produced), we are of the belief that the adjudications suffers from legal infirmity of limitation. When the Authorities issued show cause notice on 15.1.98 for the year 1992-93 to raise the demand, the declarations of 1991-92 was well available before them as has been led by the ld. Counsel at the hearing stage. Such observations alone calls for dismissal of Revenue's appeal on the point of limitation only. We order accordingly.

(Order dictated and pronounced in open court on 4.11.2009).

(M. Veeraiyan)
Member (Technical)

(D.N. Panda)
Member (Judicial)

Ckp.