

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/584 /2007

Date 14/02/2008

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

To :
C.C.E BHOPAL
HOSHANGABAD ROAD, 48, ADMINISTRATIVE
AREA, AREA HILLS, BHOPAL (M.P.) 462011

C.C.E BHOPAL

Appellant

M/S DIAMOND CEMENTS-II

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. ST/31/08 Customs dated 23-1-08
passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax
alongwith stay order no. ST/58/08

Assistant Registrar
(Customs Appeal Branch)

Copy to :


1. Respondent

M/S DIAMOND CEMENTS-II

P.O. NARSINGARH, DISTT. DAMOH (M.P)

2. Adv. / Consult

3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file


Assistant Registrar
(Customs Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I**

Service Tax Stay Application No. 2413 of 2007
Service Tax Appeal Nos. 584 of 2007

[Arising out of Order-in-Appeal No. 39-ST/BPL/2007-08 dated 27.7.2007
passed by Commissioner of Central Excise (Appeals), Bhopal]

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. T.K. Jayaraman, Member (Technical)

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1. Whether Press Reporters may be allowed to see :
the Order for publication as per Rule 27 of the
CESTAT (Procedure) Rules, 1982?
 2. Whether it should be released under Rule 27 :
of the CESTAT (Procedure) Rules, 1982 for
publication in any authoritative report or not?
 3. Whether Their Lordships wish to see the fair :
copy of the Order?
 4. Whether Order is to be circulated to the :
Departmental authorities?
-

Commissioner of Customs
Bhopal

Appellants

Vs.

Diamond Cement

Respondents

Appearance: Mr.A.K. Madan, DR for the Appellants
Mr. S.Vasudevan, Advocates for the Respondent

CORAM:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. T.K. Jayaraman, Member (Technical)

Final Order No. ST/31/08 Date of decision : 23.1.2008
Stay ORDER NO. ST/58/08

Per Justice S.N.Jha (for the Bench):

This appeal by the Revenue is directed against the order of Commissioner (Appeals), Bhopal dated 27.7.07 allowing refund of the sum of Rs. 18,64,068/- in favour of the respondents M/s. Diamond Cement.

2. The dispute relates to service tax for the period 16.11.97 to 2.6.98. The respondent is a recipient of goods transport service. Levy of service tax on goods transport service has a somewhat chequered history. Suffice it to say for the purpose of this appeal that the levy of service tax on the goods transport service on service providers led to agitation by the transport operators in the aftermath of which the liability was fastened on recipients of the service. The amendment made in this regard, however, was struck down by the Supreme Court in the case of *Laghu Udyog Bharati*. Later another amendment was made in the year 2000, revalidating the levy with retrospective effect from 16.11.97 which was upheld by the Supreme Court in the case of *Gujarat Ambuja Cements Ltd. vs. UOI* [2005 (182) ELT 33(SC)].

3. In the meantime, the respondent was served with a show cause notice on 4.9.01 and finally on 6.9.2002, an order was passed confirming demand of service tax amounting to Rs.18,64,068/-. After the respondent's request for waiver was disallowed by the Commissioner (Appeals), the said amount was deposited under protest on 25.6.03. The Commissioner (Appeals) finally upheld the demand against which the respondent came to this

Tribunal in Appeal No. ST/46/04-NB(A) which was allowed on 21.2.05 and the order was set aside. It may be mentioned here that the Revenue has gone to Supreme Court in appeal against the said order of the Tribunal. The respondents filed application for refund of the amount in the light of the decision of this Tribunal. The Department, on the other hand, issued another show cause notice in the light of decision of the Supreme Court in the case of Gujarat Ambuja Cements Ltd. The Deputy Commissioner vide his order dated 28.1.2006 rejected the claim for refund. By the order impugned in this appeal, the Commissioner (Appeals) set aside the said order and allowed refund to the respondents as mentioned at the outset.

4. After hearing learned DR and learned counsel of the respondent at length, we are of the view that appeal of the respondents having been allowed by the Tribunal, they became entitled to refund of the amount deposited by them pursuant to the interim order of the Commissioner (Appeals) dated 20.6.03. Learned DR took pains to satisfy us that the show cause notice was in accordance with law as it had been issued in the light of decision of Supreme Court in the case of Gujarat Ambuja Cement. We however, find substance in the submissions of learned counsel for respondents that inter parte order cannot be nullified by issuing show cause notice and withholding refund of the amount which the respondents had deposited pursuant to the interim order of the Commissioner. As indicated above, the Department challenged the order of this Tribunal dated 21.2.05 and the matter is pending in the Supreme Court, we are of the view that till such time the matter is finally decided by the Supreme Court, in the absence

of any interim order to the contrary, the Department has no option but to implement order of this Tribunal dated 21.2.05.

4. In the circumstances, this appeal is dismissed. Needless to clarify that the refund of the amount shall be subject to the final decision of the Supreme Court in the pending appeal.

(Dictated in the open Court)

(Justice S.N. Jha)
President

(T.K. Jayaraman)
Member(Technical)

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