

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

Appeal No. E/477 /2006-SM[BR]

Date 09/01/2008

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

To :
M/S GUJRAT AMBUJA CEMENT LTD,
VILL-RABRIYAWAS TEHSIL-JAITARAN,
DIST,PALI(RAJ)

M/S GUJRAT AMBUJA CEMENT LTD,

C.C.E. JAIPUR I

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 15/2008-SM[BR] dated 20.11.2007
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.
2. Adv. / Consult SHRI. RAVI RAGHVAN ADV.
B-6/10 SAFDARJUNIG ENCLAVE NEW DELHI-29
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
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Excise Appeal No. 477 of 2006-SM(BR)

(Arising out of Order-in-Appeal No. 666(HKS)CE/JPR-II/2005 dated 24.11.05 passed by the Commissioner of Central Excise (Appeals), Jaipur)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT

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 would 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.	

Gujarat Ambuja Cements Ltd.

Appellant

Vs.

CCE, Jaipur

Respondent

Appearance:

Shri Ravi Raghvan, Advocate

- For appellant

Shri B.S. Suhag, SDR

- For respondent

CORAM:

HON'BLE MR. S.S. KANG, VICE PRESIDENT

Date of Hearing: 20.11.07

Final Order No.....15/08-SM(BR).....dated.....20/11/07

Per S.S. Kang :

Heard both sides.

2. The appellant filed this appeal against the impugned order whereby demand of Rs.2,31,373/- was confirmed and penalty of the equal amount was imposed. The demand was

confirmed after denying the credit in respect of furnace oil used in the generation of electricity which is supplied to the residential colony.

3. The contention of the appellant is that the appellants are engaged in the manufacture of cement and the residential colony is also part of their factory premises. The appellants are purchasing power from the State Electricity Board for the residential colony as well as for manufacture of the cement. From the year 2000 the appellant started power generation for captive consumption and they started taking credit in respect of the furnace oil used for the generation of electricity. The contention is that from the figures in the balance sheet the Revenue case is that the certain portion of captively produced electricity is supplied to the residential colony and the same is not used for manufacture in or in relation to the manufacture of final product, therefore, are not entitled for credit in respect of furnace oil consumed for generation of quantity of electricity supplied to the residential colony. The contention is that in the balance sheet it is mentioned that consumption per unit of production does not include electricity consumed in the residential colony which

is 0.53 KWH/T. Similarly, for other periods, the quantity of electricity consumed in the residential colony is mentioned. The contention is that the Revenue's case is that the quantity mentioned in the balance sheet consumed in the residential colony is generated from the captive power plant and the demand is made in respect of furnace oil consumed for generation of quantity of electricity supplied to the residential colony as per the quantum mentioned in the balance sheet. The contention is that in fact, the appellants are purchasing electricity from the State Electricity Board for residential colony and they are also small generating set for supply of electricity to the colony in case of emergency regarding which they are not taken any credit in respect of diesel. The contention is that only in the extreme emergency some portion of electricity captively consumed is supplied to the residential colony regarding which they are maintaining proper records and according to that record maintained by the appellant they had already reversed the credit taken on furnace oil which is used for generation of electricity supplied to the residential colony. In reply to show-cause notice, the appellants specifically mentioned that proper records for the

use of electricity which were captively generated and used in the residential colony are maintained and audit objection was raised, the appellant produced relevant records. The contention is that the finding of lower authority is that the appellant failed to produce any evidence in support of their claim are not sustainable. The contention is that the quantity of electricity which was purchased from the Electricity Board or generated by diesel generating sets were not taken into consideration while confirming the demand. In these circumstances, the contention is that the relevant records were not taken into consideration hence matter requires re-consideration by the adjudicating authority.

4. The contention of the Revenue is that as per their balance sheet they had shown electricity consumed in the residential colony and as per the percentage shown in the balance sheet the demand is made and appellant failed to show any documentary evidence in support of their claim, therefore, demand is rightly made.

5. I find that in this case the admitted fact is that the appellant are having residential colony in the factory

premises and they were purchasing power from the State Electricity Board and also they have small diesel set. It is also admitted by the appellant that in case of emergencies electricity was also supplied from the power plant which is set up for generating electricity for use in the manufacture of their final product and appellant also submitted that they are maintaining separate records regarding such supply from the captive power plant and already reversed the credit in respect of the furnace oil which is used in the manufacture of power which is supplied to the residential colony. I find that in the balance sheet only consumption of electricity is shown and it is clarified that this does not include the power used in the residential colony. It is nowhere mentioned that the electricity consumed in the residential colony is from the captive power plant. In these circumstances, I find merit in the contention of the appellant that the quantum of electricity consumed in the residential colony supplied by electricity Board and from other source is not taken into consideration. In these circumstances, matter requires re-consideration by the lower authority. The impugned order is set aside and the matter is remanded to the adjudicating authority to decide

afresh after affording opportunity of hearing. The appeal is disposed of by way of remand.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM