

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/1007 -1008 /2006 -SM [BR]

Date 04/03/2008

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

To :
(2) SHREE CEMENT LIMITED
BANGUR NAGAR, BEAWAR, RAJASTHAN

SHREE CEMENT LIMITED

Appellant

C.C.E. JAIPUR-II

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 374- 375 /2008-SM [BR] dated 28.1.2008 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-II

THE COMMISSIONER OF CENTRAL EXCISE, JAIPUR,
NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR

2. Adv. / Consult SHRI.K.K. SHARMA ADV.

C/O APPELLANT;-----

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)

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

E/Appeal No.1007 & 1008 /2006-SM

(Arising out of order in appeal No.968-969/HKS/CE/JPR.II/05 dated
29.12.05 passed by the Commissioner of Central Excise (Appeals), Jaipur)

For approval and signature:

Hon'ble Mr.P.K. Das, Member(Judicial))

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?

Nr.

M/s Shree Cement Limited

Appellant
(Rep. by Shri K.K. Sharma, Advocate)

Vs

CCE, Jaipur-II

Respondent
(Rep. by Shri A.K. Rastogi, DR)

Coram: Hon'ble Mr P.K. Das, Member(Judicial)

Date of Hearing: 28.1.2008

Final Order No. 374-375/2008-SM(BR)

Per P.K. Das:

Heard both sides and perused the record.

2. The appellants filed these appeals against the denial of credit on Road Sweeper. The learned Advocate submits that the Adjudicating Authority

passed the order in terms of the remand order dated 8th February, 2005 of the Tribunal. It is revealed from the Tribunal's order that the appellants contended that the said item is not falling within the ambit of 'capital goods' and is within the definition of 'input'. The Tribunal remanded back the matter to the adjudicating authority to examine the admissibility of modvat credit to the appellants on the item in question as 'input'. The Commissioner (Appeals) observed that the appellants contended that the Road Sweeper is a Pollution Control Equipment and accordingly it is 'capital goods'.

3. I find that the case was remanded to the adjudicating authority to examine as to whether the item is input, as claimed by the appellants and therefore the contention of appellants in de-novo proceeding that Road Sweeper is not input, which is contrary to the scope of remand order. Therefore, I do not find any reason to interfere with the orders of the lower authorities

4. The learned Advocate submits that in this case, penalty is not warranted. I find that the issue involved is interpretation of provision of law and therefore, penalty is not justified. Accordingly, penalty is set aside. The appeals are disposed of in the above terms.

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Das)
Member(Judicial)