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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/2380/2006-2381/2006 - SM

Date 10/10/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. M/S VIKRAM CEMENT (P) LTD
REGD. OFFICE 63 / 2 MALLROAD, BALAJI COMPLEX, KANPUR[U.P]

2. SHRI SUNIL KUMAR GUPTA AUTH. SINATORY OF
M/S VIKIRAM CEMENT PVT. LTD.
R/O 219A HARJINDER NAGAR SUBHASH ROAD LAL BANGLOW KANPUR[U.P]

Appellant
Vs
Respondent

THE COMMISSIONER OF CENTRAL EXCISE KANPUR

I am directed to transmit herewith a certified copy of **Final order No.** 1355 – 1356 / 2008- **SM[BR]** dated 10.9.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
THE COMMISSIONER OF CENTRAL EXCISE KANPUR
117/7, SARVODAYA NAGAR, KANPUR
2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
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Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal No. 2380-2381 of 2006-SM(BR)

[Arising out of Order-in-Appeal No. 135-136/CE/APPL/KNP/2006 dated 13.3.2006 passed by Commissioner (Appeals) Central Excise, Kanpur.]

For approval and signature:

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

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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? : Yes

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1. M/s. Vikram Cement (P) Ltd. — Appellants
2. Shri Sunil Kumar Gupta, Authorised Signatory

Vs.

Commissioner of Central Excise Kanpur — Respondent

Appearance: Mr. Bipin Garg, Advocate for the Appellant
Mr. K.K. Goyal, Jt.CDR for the Respondent

Date of decision : 10.9.2008

final **ORDER NO. 1355-1356/06 SM (BR)**

Per P.K.Das (for the Bench):

Relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Cement classifiable under sub heading No. 2502.29 of the Schedule to the Central Excise Tariff Act, 1985. On 23.9.03, the Central Excise Officers visited the appellants factory and conducted stock verification and also examined the records. The officers also recorded the statement of representative of the appellant. It has been alleged that the appellant availed Cenvat credit on cement which was not utilised in the manufacture of final product. The adjudicating authority denied credit of Rs.2,10,040/- and imposed penalty of equal amount under section 11AC of Central Excise Act, 1944 on appellant No. 1. He also imposed penalty of Rs. 10,000/- on Shri Sunil Kumar Gupta, authorised signatory, appellant No. 2 herein. Commissioner (Appeals) rejected the appeals filed by the appellants.

2. Learned advocate submits that the appellant received the moisturised cement which is called as set cement and utilised in the manufacture of final product. He also submits that the chemical examiner observed that the mixture of such cement amounts to adulteration, which is beyond the scope of Central excise law. He further submits that that the appellant requested for cross-examination of the Chemical examiner and transporter which was denied and the orders were passed in gross violation of principle of natural justice. He relied upon the decision of the Tribunal in the case of Modipon Ltd. vs. CCE, Meerut [1999 (114) ELT 1006 (Tri)].

3. Learned DR on behalf of the Revenue reiterates the finding of the Commissioner (Appeals). He drew the attention of this Bench to show cause notice wherein it is alleged that the appellants used the set cement and not fresh cement. He further submits that the appellant failed to produce any evidence of utilisation of cement supplied by L&T.

4. After hearing both sides and on perusal of records, it is seen from the show cause notice that Shri Sunil Kumar Gupta, authorised signatory in his statement dated 23.9.03 stated that they were using 85% clinker, 10% set cement and 5% gypsum to manufacture cement. It has also stated that they used set cement (cement turned into lump due to moisture) which are purchased from various companies at cheaper rate. It has further been stated that such set cement was received from Rail godown at Kanpur and thereafter it was sent to their unit. The learned advocate submits that they received set cement under Sales Tax Form 31. The appellants availed credit on cement received from L&T. It is seen from the impugned order that L&T Ltd. stated that they have not supplied set cement to the appellants. The Chemical examiner in the test report stated that the mixing of set cement amounts to adulteration and damaged cement cannot be an input in the manufacture of cement.

5. To my mind, the view of chemical examiner is not relevant in this case. So, there is no requirement for cross examination. The main dispute is whether the cement received by them was utilised in the manufacture of final product. It appears that the appellants have failed to produce any evidence of utilisation of cement supplied by L & T Ltd. in the manufacture of final product. So, I do not find any force in the submission of the learned advocate. I find that the non-utilisation of the cement in the manufacture of final product was detected by the Central Excise officer during their visit.

Thus, it is a case of suppression of fact of credit with intend to utilise credit. Accordingly, the demand of duty and penalty against appellant No. 1 is justified. However, I do not find any involvement of appellant No.2 for evasion of duty. Accordingly, the penalty imposed on appellant No.2 is not sustainable.

5. In view of that, the appeal filed by appellant No. 1 is rejected. Appeal of appellant No. 2 is allowed.

(Pronounced in the open Court)

(P.K.Das)
Member(Judicial)

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