

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/81 /2007 -SM[BR]

Date 03/09/2008

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

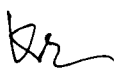
To :
C.C.E. JAIPUR II
NEW CENTRAL REVENUE BUILDING, 'C' SCHEME,
JAIPUR
C.C.E. JAIPUR II

Appellant

Vs
Respondent

M/S J.K.CEMENT WORKS

I am directed to transmit herewith a certified copy of **Final order No. 1254 / 2008 -SM[BR]** dated 18.8.2008
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar

(SM Appeal Branch)

Copy to :

1. Respondent

M/S J.K.CEMENT WORKS

NIMBAHERA, CHITTORGARH (RAJASTHAN)

2. Adv. / Consult

NONE;-----

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 Publications (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -

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 60017

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 - 15

15. Office Copy

16. Guard file


Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K Puram, New Delhi-110066

Court- IV

Date of hearing: 18.8.2008

E/Appeal No.81/2007-SM(BR)

(Arising out of Order-in-Appeal No. 628 (HKS)CE/JPR-II/2006
dated 17.11.2006 passed by the Commissioner of Customs, Central
Excise & Service Tax (Appeals), Jaipur-II)

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?
-

m

yes

CCE, Jaipur-II

Appellant/Applicant
(Rep. by Shri Sansar Chasnd, DR)
Vs.

M/s J.K. Cement Works

Respondent
(None)

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

Final Order No. 1254/08-SM(BR)

Per: P.K. Das

The Adjudicating Authority confirmed demand of Cenvat Credit of Rs. 7,16,718.00 and appropriated the said amount as ^{deposited} ~~revised~~ by the Respondent before issue of show cause notice. He also imposed penalty of equal amount of duty under Section 11 AC of Central Excise Act, 1944 read with Rule 13 (2) of Cenvat Credit Rules. Commissioner (Appeals) modified the Adjudication Order in so far as penalty was reduced to Rs. 2,00,000.00. Hence, the Revenue filed this appeal for enhancement of penalty of equal amount of duty.

2. After hearing the Id. DR and on perusal of the records, it is seen that the Hon'ble Delhi High Court in the case of K.P. Pouches (P) Ltd. Vs. UOI & Anr. reported in 2008 (85) RLT 483 (Del.) held that in terms of first proviso to section 11 AC of Central Excise Act, 1944, penalty is imposable 25% of duty as determined, if the assessee deposited the duty as demanded within 30 days from the date of receipt of the order.

3. In the present case the Respondent deposited the duty before issue of show cause notice. The Commissioner (Appeals) reduced the penalty approximately 25% of duty. So, there is no reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

(Dictated and pronounced in the open court.)

(P.K. Das)
Member (Judicial)

K. Gupta