

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/104 /2007- SM[BR] E/ CO/ 84 / 2007

Date 05/09/2008

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

To :
C.C.E. RAIPUR

TIKRAPARA, DHAMTARI ROAD, RAIPUR(C.G.)

C.C.E. RAIPUR

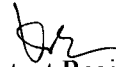
Appellant

Vs
Respondent

M/S ORISSA CONCRETE & ALLIED IND. LTD.

I am directed to transmit herewith a certified copy of **Final order No 1267 / 2008 –SM[BR]**. dated 19.8.2008

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 ORISSA CONCRETE & ALLIED IND. LTD.

R.S.D. STATION COLONY, KAPA, RAIPUR (C.G.)

2. Adv. / Consult SHRI V. SHUKALA ADV.

N/ V ;-----

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: 19.8.2008

Appeal No.E/104/2007-SM(BR) and
E/Co/84/2007-SM(BR)

(Arising out of Order-in-Appeal No. 191/RPR-I/2006 dated 18.10.2006 passed by the Commissioner (Appeals-I) Central Excise, Raipur)

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?

2.

yes

CCE, Raipur

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

Vs.

M/s Orissa Concrete & Allied Ind. Ltd.

Respondent
(Shri V. Shukla, Advocate)

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

Final Order No. 12 67 / 08 - Sm (BP)

Per: P.K. Das

After hearing the Id. DR and on perusal of the records, it is seen that the Adjudicating Authority confirmed the demand of Cenvat Credit of Rs. 25,165.00 and Education Cess of Rs. 503.00 and appropriated the said amount as deposited by the Respondent before issue of show cause notice. He also imposed penalty of equal amount under Section 11 AC of Central Excise Act, 1944 alongwith interest. Commissioner (Appeals) set-aside the penalty imposed under Section 11 AC of the Act. Hence, the Revenue filed this appeal.

2. On perusal of the Adjudicating Order, it is seen that the Central Excise Officers detected shortage of raw material during stock verification. Shri B.S. Thakur, Authorised Signatory of the Respondent in his statement stated that Cement found short was

affected by leakage of water and, therefore, is became unusable. It was found that there is no material placed by the Revenue that the shortage quantity was removed clandestinely. So, Section 11 AC of the Act cannot be invoked. Hence, I do not find any 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