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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/ 416 / 2007 – SM [BR] Date 22/12/2008

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

To :
J.K. CEMENT WORKS
KAILASH NAGAR, NIMBAHERA, DISTT.
CHITTORGARH (RAJ)

J.K. CEMENT WORKS Appellant
Vs
C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order** No.1609 / 2008-**SM[BR]** dated **10.12. 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
   NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR
2. Adv. / Consult SHRI BIPIN GARG ADV.
   B-1/1289 –A, VASANT KUNJ NEW DELHI -70
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
15. Office Copy
16. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Excise Appeal No. 416 of 2007 (SM)

[Arising out of the Order-in-Appeal No. 628 (HKS) CE/JPR-II/2006 dated 20/11/2006 passed by The Commissioner (Appeals) – II, Central Excise, Jaipur.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

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 Department Authorities?	:

M/s J.K. Cement Works — Appellant

Versus

CCE, Jaipur — Respondent

Appearance

Shri Atul Gupta, C.S. – for the appellant.

Shri S. Gautam, Authorized Representative (DR) – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 10/12/2008.

Final Order No. 1609/08. SM(BR) Dated : 10.12.08

Per. Rakesh Kumar :-

In this case certain stock of coke on which Cenvat credit amounting to Rs. 7,16,718/- (Rupees Seven Lakhs Sixteen Thousand Seven Hundred and Eighteen only) had been taken by the appellant was washed away in flood before it could be used in manufacture of the final products. Subsequently it was pointed out by the Department that the Cenvat credit taken in respect of the coke, which was washed away in flood, should be reversed. The appellant reversed the credit alongwith interest. However, subsequently show cause notice was issued for confirming the demand of Rs. 7,16,718/- alongwith interest which had already, been paid by them and also for imposition of penalty under Rule 13 (2) of Cenvat Credit Rules. The Assistant Commissioner vide order-in-original dated 21/07/06 confirmed the Cenvat credit demand alongwith interest and imposed penalty of equal amount of Rs. 7,16,718/- on the appellant under Rule 13 (2) of Cenvat

Credit Rules, 2002 readwith Section 11AC of Central Excise Act. The Commissioner (Appeal) while upholding the Cenvat credit demand alongwith interest, reduced the penalty to Rs. 2,00,000/- (Rupees Two Lakhs only) observing that the offence is not so great that it should attract an amount of equal penalty. It is against this penalty that the appellant has filed the present appeal pleading that since at the time of taking Cenvat credit, the same has been correctly taken and since the goods were washed away in flood before the same could be used and subsequently when the department pointed out the Cenvat credit was reversed alongwith interest, no penalty was imposable.

2. Heard both the sides.

2.1 Shri Atul Gupta, Company Secretary, the learned counsel for the appellant pleaded that in this case, there are no circumstances which justify the imposition of penalty on the appellant, that at the time of taking the credit, the same had been validly taken, but the goods were destroyed in the floods before the same could be used for manufacture of finished goods and subsequently as soon as the department pointed out, the Cenvat credit in respect of the goods lost in floods was reversed alongwith interest, even though under protest. He pleaded, in view of these circumstances, no penalty should be imposed and in this regard he relied upon the Tribunal's judgment in case of **Punjab Communications Ltd. vs. CCE, Chandigarh** reported in **2002 (145) E.L.T. 301 (Tri. – Del.)**, wherein it was held that when the inputs in respect of which Cenvat credit has been taken were destroyed by fire accident and the appellant had neither informed the fact of the destruction to the department nor reversed the Cenvat credit, even in such circumstances, the penalty is not imposable under Erstwhile Rules 57 – I (4) and (5) of the Central Excise Rules, 1944.

2.2 The learned Departmental Representative pleaded that though the appellant at the time of receipt of the inputs had rightly taken the Cenvat credit, when the inputs were lost in flood they should have intimated the department and reversed the Cenvat credit, but neither any such intimation was given, nor the Cenvat credit was reversed and the credit was reversed only when this irregularity was pointed out by the department to the appellant. He, therefore, pleaded that the penalty upheld in the impugned order is just and there is no case for setting aside the same. He relied upon the Tribunal's judgment in case of **Ramala Sehkari Chinni Mills Ltd. vs. CCE, Meerut – I** reported in **2007 (213) E.L.T. 361 (Tri. – Del.)** and the Tribunal's judgment in case of **Unicure (I) Pvt. Ltd. vs. CCE, Noida** reported in **2006 (195) E.L.T. 106 (Tri. – Del.)**.

3. I have carefully considered the submissions from both the sides. There is no dispute about the fact that the Cenvat credit of Rs. 7,16,718/- which was subsequently reversed alongwith interest, had initially being taken on receipt of coke to be used as raw material for manufacture of finished goods. But before these inputs could be used, the same were destroyed in floods. There is also no dispute about the fact that the loss of the cenvated inputs in floods was not intimated to the department and the Cenvat credit was not reversed. But the Cenvat credit had been correctly taken at the time of receipt and the same alongwith interest was reversed when it was pointed out by the department. I find that in similar circumstances, in case of Punjab Communications Ltd. vs. CCE, Chandigarh (Supra), the Tribunal had held that when at

the time of receipt of the inputs, the Cenvat credit has been correctly taken and subsequently the inputs were destroyed by fire accident and the credit was reversed on being pointed out by the department no penalty is imposable. The Tribunal's judgments cited by the learned DR – M/s Ramala Sehkari Chinni Mills Ltd. (Supra) and M/s Unicure (I) Pvt. Ltd. (Supra) are not on the issue of imposition of penalty in such cases. Therefore following the Tribunal's judgment in case of M/s Punjab Communications Ltd. (Supra), I hold that no penalty is imposable on the appellant. The part of the impugned order upholding penalty on the Appellant is set aside and the appeal is allowed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK