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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/3369/2006 – SM[BR] Date 28/05/2009

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

To :
M/S ADITYA CEMENT
(A UNIT OF GRASIM INDUSTRIES LTD)
SAMBHUPURA,DISTT-CHITTORGARH(RAJ)

M/S ADITYA CEMENT — Appellant

Vs

C.C.E. JAIPUR II — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 522 / 2009 –SM[BR] Dated 22.5.2009

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
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
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. Director Publications. Customs. Excise. I.P. Estate. New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

EXCISE APPEAL NO. 3369 OF 2006-SM

[Arising out of Order-in-Appeal No. 404(HKS)/CE/JPR-II/2006 dated 4.7.2006 passed by the Commissioner (Appeals-II), Central Excise, 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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No.
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.

M/s. Aditya Cement — Appellants

Vs.

CCE, Jaipur — Respondent

Appearance:

Shri Mayank Garg, Advocate for the appellants;
Shri S.K. Bhaskar, D.R. for the Revenue

Coram:

Hon'ble Mr. P.K. Das, Member (Judicial), Date of hearing/decision: 22nd May, 2009

FINAL ORDER NO. 522/09-SM(BR) **dated** 22.5.09

Per P.K. Das:

The appellants filed this appeal against rejection of refund claim of Rs. 70,612/-. Original authority sanctioned the refund claim but it was directed to deposit in the Consumer Welfare Fund. Commissioner (Appeals) upheld the adjudication order.

2. Learned Advocate on behalf of the appellants submits that price was remained same prior and after clearance of the goods and, therefore, there is no scope of passing the incidence of duty to the customer. Commissioner (Appeals) rejected the appeal following the decision of the Hon'ble Supreme Court in the case of Allied Photographic, reported in 2004 (166) ELT 003 (SC). At this stage learned Advocate fairly submits that they have filed affidavit along with C.A. certificate to the effect that incidence of duty was not passed to the customer. He further submits that this evidence was not before the original authority.

3. In view of the above, I find that to meet the ends of justice it will be proper to remand the matter to the original authority to examine the documents. Hence, impugned order is set aside and the matter is remanded back to the original authority to examine the evidence. Needless to say that the appellants should be given opportunity of personal hearing before passing the order. Appeal is allowed by way of remand.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK