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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

Date **24/06/2011**

Appeal No. **E/2125/2008,2344/2008 – SM [BR]**

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.
C.C.E. RAIPUR Appellant
Vs
Respondent
M/S AMBUJA CEMENT EASTERN LTD.,

I am directed to transmit herewith a certified copy of **Final order No. 335-336/2011-SM[BR]** dated 14.6.2011 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 AMBUJA CEMENT EASTERN LTD.,
(UNIT BHATAPARA) AT & P.O.
RAWAN, TEHSIL BALODA
BAZAR,
DISTT- RAIPUR (C.G.)
2. Adv. / Consult SHRI V.LAKSHMIKUMARN ADV.
B-6/10, SAFDARJUNG ENCLAVE NEW DELHI-29.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

3. **M/S AMBUJA CEMENTS LTD.**
(UNIT: BHATAPARA),RAWAN, RAIPUR, CHATTISGARH.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH
Court No.III

Excise Appeal No.E/2344/08-SM

(Arsing out of Order-in-Appeal No.102/RPR-I/2009 dated 12.9.2008 passed by the CCE (A), Raipur)

For approval and signature:
Hon'ble Mr.M.Veeraiyan, 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?	No
2	Whether it should 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	No

CCE, Raipur — Appellants

Vs.

M/s.Ambuja Cement Eastern Ltd. — Respondent

And
Excise Appeal No.E/2125/08-SM

M/s.Ambuja Cement Eastern Ltd. — Appellants

Vs.

CCE, Raipur — Respondent

Present for the Appellant: Shri Anil Khanna,SDR and vice versa
Present for the Respondent: Shri Hemant Bajaj, Adv. and vice versa

Coram: Hon'ble Mr. M.Veeraiyan, Member (Technical)

Date of Hearing/decision: 14.06.2011

Final **ORDER NO.** 335-336/ 2011 SM (Br)

PER: M.VEERAIYAN

1.1 Appeal No.E/2125/08 is by M/s.Ambuja Cement Eastern Ltd. against the order-in-appeal No.102/RPR-I/2009 dated 12.9.2008.

1.2 Appeal No.E/2344/08 is by the department against the very same impugned order.

1.3 Both the appeals arise out of the same order, and therefore, they are being disposed of by this common order.

2. Heard both sides.

3.1 The appellant-assessee has filed appeal against the order of the Commissioner (Appeals) by which he upheld the decision of the original authority demanding duty of Rs.1,22,793/- after denying credit on the security services utilized in the colony of employees of the appellant-assessee and imposing penalty of Rs.1,22,793/-.

3.2 The department is in appeal against the order of the Commissioner (Appeals) insofar as the same related to allowing the credit of service tax in respect of service of telephone used in the guest house and the residences of the President and the Vice President of the appellant-assessee.

4.1 Learned Advocate for the appellant-assessee submits that the decision of the Tribunal in the case of Manikgarh Cement vs. CCE, Nagpur reported in 2008 (9) STR 554 and the decision of the Tribunal in the case of CCE, Visakhapatnam vs. Hindustan Zinc Ltd. reported in 2009 (16) STR 704 permitted the credit in respect of services used in connection with the security of colony. However, he fairly submits that the Hon'ble Bombay High Court in the case of CCE, Nagpur vs. Manikgarh Cement vs. reported in 2010 (20) STR 456 (Bom.) held that security services provided in the colony of the employees of the assessee cannot be treated as input service. However, he submits that since the Tribunal in the two decisions including one which has been set aside by the Hon'ble Bombay High Court have held that such credit is available, there cannot be any suppression of relevant facts as the view held by the appellant-assessee that they were eligible to credit is bonafide belief. Since the show cause notice dated 17.9.07 has been issued demanding duty for the period from January, 05 to June, 06, the same is fully time barred.

4.2 He also submits that in respect of cenvat credit on services relating to telephones installed in the guest house and in the houses of the President and Vice President of the appellant-assessee, the same is to be permitted in the light of the decision of the Tribunal in the case of CCE, Visakhapatnam vs. Andhra Pradesh Paper Mills Ltd. reported in 2010 (254) ELT 354 and in the case of CCE, Chennai-III vs. Greaves Cotton Ltd. reported in 2009 (239) ELT 137.

5. Learned SDR drawing my attention to the decision of the Hon'ble Bombay High Court in the case of Manikgarh Cement submits that the appellant-assessee is not eligible for the credit in respect of input service in connection with security service used in the colony of the employees of the appellant-assessee.

6. I have carefully considered the submissions and perused the records. The issue of eligibility of cenvat credit on security service utilized for the colony of the employees stands decided by the Hon'ble Bombay High Court in the case of Manikgarh Cement and the same is in favour of the department. However, the submission of the learned Advocate that the demand is time barred deserves to

be accepted, as their view was in consonance with the earlier decisions of the Tribunal.

7. As regards the departmental appeal relating to setting aside the order of the Commissioner (Appeals) allowing the credit of Rs.6,940/- in relation to telephones installed in the guest house and houses of President and Vice President, the same does not deserve to be accepted in view of the decision of the Tribunal in the case Andhra Pradesh Paper Mills Ltd. and in the case of Greaves Cotton Ltd. cited supra.

8. In view of the above, appeal No.E/2125/08 of the assessee is allowed with consequential relief as per law. The appeal No.E/2344/08 of the department is rejected.

(Pronounced in the open court)

(M.VEERAIYAN)
MEMEBR (TECHNICAL)

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