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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/1622/2004 – SM [BR]   Date 24/06/2011

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

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)
C.C.E. INDORE   Appellant

Vs

CEMENT CORPORATION OF INDL.LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order No. 341 / 2011-SM[BR]** dated 16.6.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
CEMENT CORPORATION OF INDL.LTD.
NAYAGAON[M.P]

2. Adv. / Consult SHRI M.V. KINI &CO.
6/39, JANGPURA-B, NEW DELHI-110014.

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 (Haryana)
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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
COURT NO. III

Excise Appeal No. 1622 of 2004-SM(BR)

[Arising out of Order-in-Appeal No. 717-CE/IND/APPL-II/2003 dated 16.12.03 passed by the Commissioner of Customs & Central Excise (Appeals), Lucknow]

For approval and signature:

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

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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? : Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
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? : Yes

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Commissioner of Central Excise. Indore — Appellants

Vs.

M/s. Cement Corporation of India Ltd. — Respondent

Appearance:

Shri R.K. Gupta, JDR for the Appellants
Shri Akshat, Advocate for the Respondent

Date of Hearing/decision : 16.6.2011

Final

ORAL ORDER NO. 341/2011 SM(BR)

Per M. Veeraiyan:

1. This is an appeal by the department against the order of the Commissioner (Appeals) No. 717-CE/IND/APPL-II/2003 dated 16.12.03 by which the Commissioner has set aside the order of the original authority confirming the demand of Rs.48,555/- on clinker of 194.22 MT found short.

2. Heard both sides. Learned DR reiterates the grounds of appeal.

3. The shortage was found during internal audit of the company through their CA. The physical stock at the time of stock taking was 72,592 MT of clinker. On the shortage of 194.22 MT of clinker was ascertained by estimating the weight on dip reading method and the same was adjusted in the RG I. The original authority confirmed the demand holding that the said goods were clandestinely removed. Commissioner (Appeals) considering the method adopted for ascertaining the stock and considering the insignificant quantity of shortage which occurred over a period of one year, set aside the demand. On going through the grounds of appeal, I find that the genuineness of shortage is not being disputed but the order of the Commissioner (Appeals) was being assailed on the ground that the respondents should have followed the remission route.

4. The shortage was undisputedly arrived at based on measurement of dip reading method and the shortage is accumulated over a period of one year and the same is recorded in the order in original as 0.03%.

5. In the facts and circumstances of the case, I do not find that the order of the Commissioner requires to be interfered.

6. Appeal is therefore, rejected.

(M. Veeraiyan)
Member(Technical)

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