

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/1200/2008 – SM[BR]

Date 09/09/2011

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

To :
CEMENT CORPORATION OF INDIA LTD.
RAJBAN CEMENT FACTORY, TEHSIL PAONTA SAHIB
DISTT. SIRMOUR, HIMACHAL PRADESH.
CEMENT CORPORATION OF INDIA LTD.

Appellant
Vs
Respondent

C.C.E. CHANDIGARH

I am directed to transmit herewith a certified copy of **Final order No. 587 /2011-SM[BR]**
passed by the Tribunal under **Section 35-C(1) of Central Excises Act, 1944**

dated 25.8.2011



Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017

2. Adv. / Consult

MR.M.V.KINI & CO. ADVOCATES & SOLICITORS

" KINI HOUSE" 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 Publications 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)

**CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram, NEW DELHI**

COURT No. II

Excise Appeal No. 1200 of 2008(SM)

[Arising out of Order-In-Appeal No.151/CE/CHD/2008, dated 18.02.2008 issued by CCE, Chandigarh].

Date of Hearing / Decision : 25.08.2011

For approval and signature:

Hon'ble Mr. D.N.Panda, Judicial Member

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?	

M/s. Cement Corp. of India Ltd.

Appellant

Versus

CCE, Chandigarh

Respondent

Coram: Hon'ble Mr. D.N.Panda, Judicial Member

Present for the Appellant – Shri Akshat Kulshrestha, Advocate and
Shri M.V.Kini, Advocate

Present for Respondent – Shri Anil Khanna, DR

final Order No. 587 / 2011 SM (BY) Dated:

Per D.N. Panda:

Ld. Counsel states that while granting permission, the committee in dispute has not permitted this appellant (a public

sector undertaking) to contest levy of duty but permission was granted for contesting penalty aspect. He submits that due to confusion in the industry, there was a bonafide belief that Cenvat credit was available to the appellant and Service Tax being introduced newly, there were various contradictory decisions of Tribunal for which the appellant could not ascertain proper position of law. There is no finding by either of authorities below as ^{do} intention of appellant to evade the duty. Therefore, levy of penalty would be unreasonable.

2. On the other hand, Ld. DR supports the order of the authorities below.

3. Heard both sides and perused the records.

4. Facts and circumstances of the case, demonstrates no willful intention of the appellant ^{to evade duty} When *mens rea* is absent, penalty is waived and appeal is allowed on such limited count without making any expression of opinion on the duty demand which is not disputed by appellant.

(Dictated and pronounced in the Open Court)

(D.N.Panda)
Judicial Member

RK-I