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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/1268/2008 – SM[BR] Date 03/05/2010

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

To :
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.
C.C.E. JAIPUR II Appellant
Vs
M/S SHREE CEMENT LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 463 / 2010 –SM[BR] dated 9.4.2010 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 SHREE CEMENT LTD.
BEAWAR,AJMER (RAJASTHAN)
2. Adv. / Consult SHRI BIPIN GARG ADV.
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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10 Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13 Office Copy
14 Guard file
15 TAXINDIAONLINE. COM PVT. LTD.UNIT NO. 1, 2ND FLOOR VASANT ARCADE, NELSON MANDELA ROAD, VASANT KUNJ NEW DELHI-70.

Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal No. 1268 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 45(RKS)/CE/JPR-II/2008 dated 29.4.2008 passed by the Commissioner of Customs & Central Excise (Appeals II), Jaipur]

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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C.C.E., Jaipur II ... Appellants

Vs.

M/s. Shree Cement Ltd. .... Respondents

Appearance:

Shri I. Baig, DR for the Appellants
Shri Atul Gupta, Advocte for the Respondent

Date of Hearing/decision : 9.4.2010

Final ORAL ORDER NO. 463/2010-SM(BR)

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 45(RKS)/CE/JPR-II/2008 dated 29.4.2008. The matter is before the Tribunal for the second time having been remanded to the Commissioner (Appeals) vide Final Order No. 1450/07-SM(BR) dated 24.9.2007.

2. Heard both sides.

3. The dispute relates to the demand of duty in relation to damaged cement received by the respondent and subjected to the processes and cleared after such processing in terms of Rule 96ZV of the erstwhile Central Excise Rules, 1944. It is noticed that the Commissioner (Appeals) has followed the decision of the Tribunal in respect of same respondent and allowed the appeal. On perusal of grounds of appeal by the Department, it is noticed that the appeal has been filed on the ground that the decision of the CESTAT bearing Final Order No. 100-102/2008-Ex dated 29.02.2008 had not yet attained finality as appeal was to be filed against the order after receipt of decision in ROM application filed by the appellant before CESTAT.

4. Learned Advocate for the respondents submits that the ROM application has already been disposed of by the Tribunal vide Misc. order No. 637/08-Ex dated 13.06.2008.

5. In as much as the Commissioner (Appeals) has followed the decision of the Tribunal in identical situation, the question of interfering with the order of the Commissioner (Appeals) does not arise.

6. The appeal of the Department is, therefore, rejected.

(M. Veeraiyan)
Member(Technical)

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