

GRAM : CEGCANAL

REGISTERED/A.D

NOTICE UNDER SECTION 130 (1) OF THE CUSTOMS ACT, 1962/35-C(1) OF THE CENTRAL EXCISE SALT ACT, 1944.

CUSTOMS, EXCISE AND GOLD (CONTROL) APPELLATE TRIBUNAL

WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI - 110066.

F.No. E/2649/2000-NB(SM) Dated 19-1-2001  
BENCH NB(SM)

From : The Registrar,  
CEGAT, New Delhi.

To, M/s Shree Cement,  
Bangur Nagar, Andheri Deori,  
BEAWAR - 305901 (Raj)

In the Matter of :-

M/s Shree Cement

APPELLANT

Vs.

CCE Jaipur

RESPONDENT

I am directed to transmit herewith a certified copy of Final Order No. A/90/2001/NB(SM)  
Dated 9-1-2001

passed by the Tribunal under Section 129-B of the Customs Act, 1962, 35-C(1) of the Central Excise & Salt Act, 1944.

Copy to :-

1. Respondent : CCE Jaipur - II

Assistant Registrar

NB(SM)

2. Advocate/Consultant : - None -

2A. Chief Commissioner of Central Excise Jaipur.

3. C.E./C.C.E. (APPEAL) : Jaipur

4. Asst. Registrar, ERB, CEGAT, Calcutta.

5. Asst. Registrar, SRB, CEGAT, Chennai.

6. Asst. Registrar, WRB, CEGAT, Mumbai.

7. Director of Publication, Customs & Central Excise, C. R. Building, I.P. Estate, New Delhi.

8. Centax Publication (P) Ltd. 1512, Bhisham Pitamah Marg, Opp. Sachedva P. T. College, Defence Colony, New Delhi.

9. M/s. Cen-Cus Publication, C-7, Main Market, Vasant, Vihar, New Delhi.

10. M/s Capital Law House, 500/7-N, Pandav Road, Vishwas Nagar, Delhi-32

11. M/s. Deeparchie Publications, M-93, Marg-44, Saket, New Delhi.

12. The U.S. (Judicial), CBEC, Min. of Finance, Dept. of Revenue, North Block, New Delhi.

13. J. C. D. R.

14. S. D. R.

15. Library, CEGAT, New Delhi.

16. Bar Association.

17. Guard File

18. Office Copy

19. Hon'ble Members (1) Shri P. C. Chacko, MCA

20. M/s Lex site con Ltd., (2)

21. M/s

Asst. Registrar

**In the Custom, Excise & Gold (Control) Appellate Tribunal  
New Delhi NORTHERN BENCH (SM)**

APPEAL NO. E/2649/00-NB(SM) OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/~~APPEAL~~ NO.

16/CE/JP-II/2000 DATED 18.04.2000.

PASSED BY COMMISSIONER,  
CUSTOMS & CENTRAL EXCISE, JAIPUR.

Date of decision 09.01.2001.

M/s SHREE CEMENT LIMITED, BEAWAR - APPELLANT (S)

Represented by Sh. ~~XXXX~~ NONE

**VERSUS**

CCE, JAIUR - RESPONDENT (S)

Represented by Sh. ~~XXXX~~ S.C. PUSHKARNA,  
JDR.

CORAM:  
SHRI P.G.CHACKO, MEMBER (JUDICIAL).

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To be referred to the Reporter or not? <sup>Yes</sup>  
*FINAL* ORDER NO. A/90/01/NB (C/M)

Per P.G.CHACKO:

The appellants are manufacturers of cement. Their factory is located at Bangur Nagar, Beawar in the District of Ajmer (Rajasthan). Before the initiation of the proceedings leading to this appeal, there were two cement manufacturing units situate adjacently, one belonging to the present appellants namely M/s Shree Cement Limited and the other belonging to

their sister concern namely M/s Raj Cement, and both were separately registered with the Central Excise Department. On 11.11.1998, M/s Shree Cement Limited took over Raj Cement and obtained a single registration for the merged units, with the Department, effective from 11.11.1998. As on the date of merger of the two units, Modvat credits on inputs as well as capital goods were lying unutilised with M/s Raj Cement. Therefore, after the merger, the present appellants applied to the Departmental authorities for permission to transfer the balances of Modvat credits lying in the RG-23A & RG-23C accounts of M/s Raj Cement to the corresponding accounts of M/s Shree Cement Limited. The application in respect of the Modvat credit on inputs was allowed by the jurisdictional Assistant Commissioner. On the other hand, similar application in relation to capital goods credit was rejected by the jurisdictional Commissioner of Central Excise as per order dated 18.04.2000. The appellants are aggrieved by this order of the Commissioner.

2. I have carefully examined the records and have heard ld. JDR Shri S.C.Pushkarna for the respondents. There is no representation for the appellants. However, they have requested for a decision on merits. In their letter of request, they have also submitted that the issue involved in this appeal stands settled in their favour by the decision of the Tribunal in the case of Orient Ceramics (P) Ltd Vs CCE, Meerut [2000 (40) RLT 582].

3. As per the impugned order, ld. Commissioner has declined permission for transfer of the capital goods credit lying in the RG-23C Pt.II account of M/s Raj Cement to like account of

the present appellants namely M/s Shree Cement, on the ground that the appellants' case did not attract the provisions of Rule 57S(5) of the Central Excise Rules. Though the Commissioner took note of the fact that the jurisdictional Assistant Commissioner had sanctioned transfer of the balance credit on inputs lying in the RG-23A Pt.II account of Raj Cement to like account of the present appellants under the provisions of Rule 57F(20) of the Central Excise Rules, he refused to follow suit and maintained that the Assistant Commissioner's order was not binding on him.

4. I have carefully examined the provisions of Rule 57F(20) and those of Rule 57S(5). I find that the provisions are pari materia. The former provisions apply to transfer of inputs-credit, while the latter are applicable to similar transfer of capital goods-credit. While Assistant Commissioner is the authority to sanction transfer of credit under Rule 57F(20), Commissioner is the authority for sanctioning similar transfer of credit under Rule 57S(5). In all other respects, the two provisions are identical. The Assistant Commissioner in the appellants' case permitted transfer of the balance credit on inputs from RG-23A Pt.II account of M/s Raj Cement to the corresponding account of the appellants under Rule 57F(20) and the decision of the Assistant Commissioner became final inasmuch as it was not sought to be reviewed by competent Departmental authority. Therefore, in my view, it would be inappropriate for the Department to justify the impugned order of the Commissioner rejecting the appellants' application for permission to transfer the balance credit on capital goods in the RG-23C Pt.II account of M/s Raj Cement to the corresponding account of the appellants.

5. Sub-rule 5 of Rule 57S reads as under:

"(5) On an application made by a manufacturer of the final products, the Commissioner may, subject to such conditions and limitations as he may impose, permit a manufacturer having credit in his account in Form RG 23C maintained under rule 57T and lying unutilised, on account of shifting of the factory belonging to the manufacturer, to another site, or on account of change in ownership, or change in the site of a factory resulting from sale, merger, amalgamation or transfer to a joint venture with the specific provision for transfer of liabilities of the old factory, to transfer such unutilised credit to such transferred, sold, merged or amalgamated factory."

The above sub-rule clearly provides that the Commissioner can permit a manufacturer having credit in his RG-23C Pt.II account maintained under Rule 57T and lying unutilised on account of change in ownership or change in the site of the factory resulting from merger, to transfer such unutilised credit to the account of the factory under the new owner or in the changed site. As already noted, the two adjacent units with separate Central Excise registration were merged into one unit on account of take-over of ownership of one of the units by the appellants from M/s Raj Cement and, thereupon, the Department granted a single registration to the merged unit (factory) whose site was different in ground plan from either of the erstwhile factory sites. Clearly a change of ownership is involved and so is a change of site resulting from merger. Therefore, the provisions of Rule 57S(5) were squarely applicable to the appellants' case and it was obligatory for the Commissioner to permit the appellants to transfer the balance capital goods credit from the account of M/s Raj Cement to that of the appellants under the said provisions, as the party was not found otherwise ineligible.

6. The decision of the Tribunal in Orient Ceramics (supra) cited by the appellants has been considered. The said

decision was rendered in a case in which two units owned by the same manufacturer were merged into a single unit for purposes of Central Excise registration. In the instant case, the two manufacturing units in question were previously owned by two separate legal entities and the merger of the two units occurred on account of one of the two units having been taken over by the owner of the other, wherein a change of ownership was also involved. Notwithstanding the factual variance, I find, the decision in Orient Ceramics [supra] is still of some aid to the instant case. In that case, the appellants had two manufacturing units situate in the vicinity of each other and they surrendered the Central Excise registration of one of the units and obtained a single registration for both the units from the department on the basis of revised ground plan. In other words, the two units merged into one factory for Central Excise purposes. The Tribunal observed that the unit whose registration was surrendered ceased to have a distinct and separate site by way of its merger with another factory (unit) and thereby the condition of "change in the site of a factory resulting from merger" stood fulfilled. I note that this observation is true in the instant case also. It would follow that sub-rule (5) of Rule 57S was squarely applicable to the present appellants' case on account of the said condition having been satisfied, apart from fulfilment of the condition of change of ownerships<sup>3</sup>.

7. In view of the above, the appeal must succeed and the same is allowed with consequential benefit to the appellants.

(Dictated and pronounced in the open court.)

(P.G.CHACKO)  
MEMBER (JUDICIAL)