

GRAM : CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

16
Appeal No. E/3339/00 - NB (SM)

BENCH NB(SM)

Dated : 9/2/07

CEGAT
NEW DELHI
To,

CCE Delhi

In the matter of :

CCE Delhi

Appellant

vs.

M/s Swarajya Cement Indus. (P) Ltd.

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/197/01/NB(SM)
Dated :31/1/2007.....passed by the Tribunal under Section 35-C(1) of Central Excise
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to : M/s Swarajya Cement Indus.,
1. Shanti Niketan, Sohana
Distt - Gurgaon Haryana

Asstt. Registrar
NB(SM)

2. CCE/LCC / (Appeal) New Delhi
3. Chief Commissioner of Central Excise / Customs. New Delhi
4. Adv. / Consult. Sh. Naveen Mullick, Adv.
c/o Respondent

5. S.D.R
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
9. Director (Review), C.B.E.C. North Block, New Delhi
10. Guard File.
11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
12. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, opp. Sachdeva P.T. College of Defence Colony, New Delhi-110003
13. M/s Lex Site Com. Ltd., Mumbai
14. Office Copy

Asstt. Registrar

CUSTOMS, EXCISE & GOLD(CONTROL) APPELLATE TRIBUNAL,
NEW DELHI.

E/APPEAL NO. 3339/00-NB(S)

(Arising out of Order-in-appeal No. 714-CE/DLH/2000 dated 22.08.2000 passed by the Commissioner of Central Excise (Appeals), New Delhi).

C.C.E., Delhi.

Appellant
(Sh. H.R. Bheema Shankar, SDR)

vs

M/s. Swarajya Cement Indus.(P) Ltd.

Respondent
(Sh. Naveen Mullick, Advocate)

FINAL ORDER NO. A/197/01/NB CS/m/
(Dated the 31st Jan./ 2001)

PER S.S. KANG :

Revenue filed this appeal against the order-in-appeal passed by the Commissioner (Appeals).

In the impugned order, the Commissioner (Appeals) held that there is no suppression of facts on the part of the respondents, hence demand is time-barred.

In this case, the respondents are engaged in the manufacture of clinkers and cement. A show cause notice was issued on 29.9.94 for demand of duty for the period from 20.3.90 to 16.9.90 on clinkers. The adjudicating authority confirmed the demand after invoking the extended period of limitation under Sec. 11A of the Central Excise Act. The respondents filed an appeal and the Commissioner (Appeals), vide impugned order, allowed the appeal.

Ld. D.R., appearing on behalf of the revenue, submits that the respondents had not filed any classification list in respect of clinkers, which are used by the respondents captively. He submits that the respondents had not filed any classification list and they suppressed the facts with intent to evade payment of duty. He, therefore, submits that the finding of the Commissioner (Appeals), in respect of suppression of facts by the respondents, may be set aside.

Sh. Naveen Mullick

Ld. Counsel, appearing on behalf of the respondents, submits that the respondents filed a classification list effective from 1.4.89 and they declared the clinker as their product used captively in the manufacture of cement. His submission is that this classification list was approved. He submits that in the year 1987, vide letter dated 19.3.87, the manufacturing process in respect of cement, was conveyed to the revenue and the Commissioner (Appeals) called for the comments of the Dy. Commissioner (Revenue) in respect of this letter and the receipt of this letter was not denied by the Range Officer. He submits that in these circumstances, the suppression cannot be alleged against the respondents.

Heard both sides.

The revenue filed this appeal against the finding of the Commissioner (Appeals) whereby the Commissioner (Appals) held that the demand is time-barred as no suppression can be alleged against the respondents. Respondents filed a classification list effective from 1.4.89 whereby they had cleared the clinkers as their product used captively in the manufacture of cement. This classification list was duly approved by the concerned authorities. Further, the Commissioner (Appeals), in the impugned order, took note of the letter dated 19.3.87 where the respondents explained the manufacturing process of the cement. The revenue is not challenging the receipt of this letter. As the appellants filed a classification list, in respect of clinkers effective from 1.4.89 and they also explained the manufacturing process in the year 1987, I

for appeal duty

find no infirmity in the impugned order. The appeal, filed by the revenue, is rejected. (Dictated in Court).

S. S. Kang
(S.S. KANG)
MEMBER (JUDICIAL)

Dt. 31st Jan., 2001
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