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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/467 /2006-468 /2006 - CU[DB] Date **24/08/2011**

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

To :
M/S MANGALAM CEMENT LTD
ADITYA NAGAR,MORAK,DISTT-KOTA(RAJ)

M/S MANGALAM CEMENT LTD Appellant
Vs
C.C.E.JAIPUR. Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/389-90 2011 CU[DB]** dated 19.08.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E.JAIPUR.
NCRB,STATUE CIRCLE,C-SCHEME,JAIPUR.

2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ,
NEW DELHI

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
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 - 110005
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
14. M/S NEER SHREE CEMENT
A UNIT OF MANGALAM CEMENT LTD,
ADITYANAGR,MORAK DISTT-KOTA(RAJ)

Assistant Registrar
(Customs Appeal Branch)

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

Service Tax Appeal No. 467-468 of 2006

[Arising out of Order-in-Appeal No. 51-52 (GRM) ST/JPR01/2006 dated 26.7.2006 passed by the Commissioner of Customs & Central Excise (Appeals), Jaipur]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, 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?	:	No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
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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M/s. Mangalam Cement Ltd. — Appellants
M/s. Neer Shree Cement

Vs.

Commissioner of Central Excise — Respondent
Jaipur

Appearance:

Shri Bipin Garg, Advocate for the Appellants
Shri Sunil Kumar, SDR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Date of Hearing/decision : 16.08.2011

Find **ORAL ORDER NO** ST/389-390/11

Per Archna Wadhwa (for the Bench):

After hearing both sides, we find that the appellants herein are manufacturers of cement and during the relevant period, were availing services of Goods Transport Operators. As they were not paying any Service Tax on receipt of such services and as the position during the relevant period was not clear and ~~the~~ ~~law~~ lot of litigation was going on before the Hon'ble Supreme Court, the department directed the applicant to deposit the Service Tax on the said services so received by them. As a result of such direction, the appellants deposited the amounts on various dates.

2. Subsequently, the proceedings were initiated against the appellants for confirmation of such deposits so made by them. After issuance of show cause notice and after following the due adjudication procedure, the original adjudicating authority confirmed the amount of Service Tax so deposited by the appellants under the directions of their jurisdictional Service Tax authorities. Such orders passed by the original adjudicating authority were put to challenge by the appellants before the Commissioner (Appeals), who set aside the same and allowed the appeals with consequential relief. Common order in appeal was passed by Commissioner (Appeals) on 28.9.2005.

3. As a result of passing of said order of the Commissioner (Appeals), appellants filed refund claims before their jurisdictional

authorities in respect of the amounts confirmed by the original authority and set aside by the appellate authority. Such refund claims were filed on 4.10.2005 i.e. within the period of around one week from the date of passing of order by Commissioner (Appeals).

4. While dealing with such refund claims, the Deputy Commissioner allowed part of the refund claims which were within the period of one year from the date of deposits; rejected the balance refund claim as barred by limitation. Appeals against the said order of the Deputy Commissioner were rejected by the Commissioner (Appeals) vide the present impugned order. Hence, the appeals filed by the appellants.

5. After hearing both sides, we find that there is no dispute about the fact that the first order of the Commissioner (Appeals) has attained ~~the~~ finality as same was not challenged by the Revenue. Infact the original adjudicating authority had granted refund claims consequent to passing of order of the Commissioner (Appeals) which were within the period of one year from the date of deposit of tax. However, he has also rejected the balance amount of claims on the ground of time bar. As such, the only issue required to be decided is to whether the claims arising as a consequence of passing of the appellate order can be rejected on the ground of time bar by holding that the same stands filed after a period of one year from the date of deposits of the same.

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6. We find that the issue is no more res integra and there are ~~arena~~ catena of judgements laying down the refund claim arising as a result of sanction

of refund order, such claims are not to be rejected on the issue of limitation. One such reference can be made to a latest order of the Tribunal in the case of Opel Alloys Pvt. Ltd. vs. Commissioner of Central Excise, Ghaziabad reported as [2010 (249) ELT 408 (Tri-Del)]. It stands held that, after considering various precedent decisions, that the amounts deposited during the course of investigation and appropriated by the adjudicating authority on confirmation of demand, are required to be refunded without deciding the same on the terms of limitation, when such confirmation orders are set aside by the higher authorities. By following the above decision, we hold that the claims filed by the appellants for refund of Service Tax deposited under the directions of the authorities and subsequently confirmed by the adjudicating authority but set aside by the Commissioner (Appeals) are required to be
reckoned from date of deposit
sanctioned, without applying the bar of limitation. We order accordingly, and allow both the appeals with consequential relief to the appellants.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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