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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/1398/2010 - EX[DB] WITH E/S/1441/2010 Date **06/04/2011**

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

To :
M/S. J K LAKSHMI CEMENT LTD.
P O JAYKAYPURAM, DISTT. SIROHI (RAJ.)

M/S. J K LAKSHMI CEMENT LTD. Appellant
Vs
C.C.E. JAIPUR II Respondent

STAY ORDER NO.436/2011-EX

I am directed to transmit herewith a certified copy of **Final order No. 325/ 2011 EX[DB]** dated 21-3-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult SH. K. K. ANAND, ADV,
A-5, BASEMENT,
LAJPAT NAGAR-III,
N. DELHI-24
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. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file
15. HONBLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL, West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 21.3.2011

**Stay Application No.1441 of 2010 in
Central Excise Appeal No.1398 of 2010**

Arising out of the order in original No.14/2010/CE/JPR-II dated 24.3.2010 passed by the Commissioner, Central Excise, Jaipur II.

J.K. Lakshmi Cement Ltd. ... Appellant

Vs.

C.C.E., Jaipur II .... Respondent

Appearance:

Shri K.K. Anand, Advocate for the appellants/applicants
Mrs. Monika Batra, Authorised Departmental Representative (DR) for the Revenue

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Mathew John, Technical Member

STAY Oral Order No. 436/2011-EX

Per Shri Justice R.M.S. Khandeparkar:

Heard the Advocate for the appellants and the DR for the respondent. As we propose to dispose of the appeal itself, the application is hereby disposed of without insisting for deposit and directing the registry to place the appeal for final hearing forthwith.

Justice R.M.S. Khandeparkar)
President

(~~Mathew John~~)
Technical Member

scd/

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL, West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 21.3.2011

Central Excise Appeal No.1398 of 2010

Arising out of the order in original No.14/2010/CE/JPR-II dated 24.3.2010 passed by the Commissioner, Central Excise, Jaipur II.

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 26 of 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

J.K. Lakshmi Cement Ltd. ... Appellant

Vs.

C.C.E., Jaipur II .. Respondent

Appearance:

Shri K.K. Anand, Advocate for the appellants/applicants
Mrs. Monika Batra, Authorised Departmental Representative (DR) for the Revenue

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Mathew John, Technical Member

FINAL Oral Order No. 325/2011-EX

Per Shri Justice R.M.S. Khandeparkar:

Heard the Advocate for the appellants and the DR for the respondent. The present appeal arises from the order dated 24.3.2010 passed by the Commissioner. By the impugned order, the Commissioner has ordered recovery of interest amounting to Rs.35,68,600/- ~~inclusive of the amount~~ relating to inadmissible cenvat credit in terms of Rule 14 of the

Cenvat Credit Rules, 2004 read with Section 11AB of the Central Excise Act, 1944.

2. Learned Advocate for the appellants has fairly conceded that though all throughout the appellants were relying upon the decision of the Hon'ble Punjab & Haryana High Court in support of their contention that in order to fasten the assessees with interest liability, the credit must not be merely availed but also must be utilized , the same no more stands a good law in view of the decision of the Supreme Court ~~decision~~ in the matter of **Union of India vs. Indo Swift Laboratories Ltd.** reported in 2011 (265) ELT 3 (SC). Perusal of the said decision while interpreting the scope of Rule 14 of the Cenvat Credit Rules, 2004 has held thus -

> ***"16. A bare reading of the said Rule would indicate that the manufacturer or the provider of the output service becomes liable to pay interest along with the duty where CENVAT credit has been taken or utilized wrongly or has been erroneously refunded and that in the case of the aforesaid nature the provision of Section 11AB would apply for effecting such recovery.***
>
> ....
>
> ....
>
> ***19. A taxing statute must be interpreted in the light of what is clearly expressed . It is not permissible to import provisions in a taxing statute so as to supply assumed deficiency. In support of the same we may refer to the decision of this Court in Commissioner of Sales Tax, U.P. v. Modi Sugar Mills Ltd. reported in (1961) 2 SCR 189 wherein this Court at para 10 has observed as follows:-***
>
> > ***'10. ....In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statute be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed ; it cannot import provisions in the statutes so as to supply any assumed deficiency.'***
>
> ***20. Therefore, the attempt of the High Court to read down the provision by way of substituting the word 'OR' by an 'AND' so as to give relief to the assessee is found to be erroneous. In that regard the submission of the counsel for the appellant is well-founded that once the said credit is taken the beneficiary is at liberty to utilize the same, immediately thereafter, subject to the Credit rules."***

3. In view of the said decision of the Hon'ble Supreme Court ~~decision~~ nothing survives in the present appeal and no fault can be found with the impugned order. The law being well settled by the said decision of

the Hon'ble Supreme Court which squarely applies to the facts of the case, the appeal deserves to be dismissed.

4. However, as rightly submitted by the Advocate for the appellants that since the earlier view was contrary to the one which has been taken by the Apex Court in the said decision, sufficient time will have to be given to the appellants to pay the amount of interest ordered to be paid under the impugned order. Accordingly, the appellants are permitted to pay interest amount demanded under the impugned order within four months from today. With this observation, the appeal is disposed of.

Justice R.M.S. Khandeparkar)
President

(Mathew John)
Technical Member

scd/