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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/3122/2010-3123/2010 - EX[DB] WITH E/S/2903-2904/2010-EX. Date **15/04/2011**

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

To :
M/S SHREE CEMENT LTD.
BANGUR NAGAR, ANDHERI DEORI, BEAWAR (RAJ.)

M/S SHREE CEMENT LTD. Appellant

Vs

C.C.E. JAIPUR II STAY ORDER NO. 447-448/2011-EX. Respondent

I am directed to transmit herewith a certified copy of **Final order No.342-343/ 2011 EX[DB]** Dated 01-4-11 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 MS. SUKRITI DAS, ADV.,
B-1/1289-A, VASANT KUNJ,
N. DELHI-70

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 (Haryana)
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. HON'BLE 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:1.4.2011

Stay Applications Nos.2903-2904 of 2010 in Central Excise Appeals Nos.3122-3123 of 2010

Arising out of the order in original No.28-29/2010/CE/JPR-II-Commissioner dated 30.7.2010 passed by the Commissioner , Central Excise, Jaipur II.

M/s Shree Cement Ltd. .. Appellants

Vs.

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

Appearance:

Ms. Sukriti Das, Advocate for the appellants/applicants
Shri S.K. Panda, Authorised Departmental Representative (Jt.CDR) for the Revenue

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

STAY Oral Order No. 447-448/2011-EX

Per Shri Justice R.M.S. Khandeparkar:

Heard the Advocate for the appellants and the Jt.CDR for the respondent. When the matter had come up on 11.2.2011 considering the short point in the matters, they were directed to be listed for hearing today for final disposal and accordingly, the applications are disposed of without insisting for any pre-deposit and directing the registry to place the appeals for final disposal in terms of the order dated 11.2.2011.

2. Applications stand disposed of.

(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:1.4.2011

Central Excise Appeals Nos.3122-3123 of 2010

Arising out of the order in original No.28-29/2010/CE/JPR-II-Commissioner dated 30.7.2010 passed by the Commissioner , Central Excise, Jaipur II.

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Mathew John, 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

M/s Shree Cement Ltd. .. Appellants

Vs.

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

Appearance:

Ms. Sukriti Das, Advocate for the appellants/applicants
Shri S.K. Panda, Authorised Departmental Representative (Jt.CDR) for the Revenue

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

FINAL Oral Order No. 342-343 / 2011-EX.

Per Shri Justice R.M.S. Khandeparkar:

Heard the Advocate for the appellant and the Jt.CDR for the respondent. These appeals arise from a common order dated 30.7.2010 passed by the Commissioner , Jaipur II whereby while disallowing the credit sought to be availed on the inputs utilised in the generation of electricity to the extent it was sold outside, ordered recovery of the amount of Rs.,1,10,53,627/- from M/s Shree Cement Ltd., Bangur City, Village Ras, Tehsil, Jaitaran, Distt. Pali and a sum of Rs.71,91,702/- from M/s Shree Cement Ltd., Bangur Nagar,Andheri Deori, Beawar.

2. The facts, in brief, relevant for decision are that the appellants are producing final product namely, cement clinker classifiable under Chapter Heading No.25.23 and they had been taking credit in relation to the duty paid on pet coke used for generation of electricity in their captive power plant which was, in turn, used for manufacture of their final product. The appellants simultaneously took credit of the duty paid on pet coke used for generation of electricity which was sold to other units outside their factory. Thus, the electricity so disposed of was not used in the manufacture of their final product within the factory of production of the appellants and to that extent, the availment of credit in relation to the duty paid on the inputs used in generation of electricity sold was wrongful and unauthorised.

3. The Commissioner relying upon the decision of the Apex Court in the matter of **Maruti Suzuki Ltd. vs. C.C.E., Delhi III** reported in 2009 (240) ELT 641 (SC) has passed the impugned order.

4. Indeed, the issue sought to be canvassed in the matter is fully covered by the decision of the Apex Court in Maruti Suzuki Ltd. case and we find no infirmity in the impugned order which has been passed squarely on the basis of law laid down by the Apex Court in Maruti Suzuki Ltd. case. Taking into consideration the undisputed fact as narrated above, the law as laid down in Maruti Suzuki Ltd. case is squarely applicable thereto, the appeals are liable to be dismissed and are accordingly hereby dismissed.

(Justice R.M.S. Khandeparkar)
President

(Mathew John)
Technical Member