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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

Date **11/07/2011**

Appeal No. E/573 /2005 - EX[DB]

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

To :
M/S A.C.C LTD
KATNI REFACTORY WORKS, KATNI (M.P.)
483504

M/S A.C.C LTD Appellant
Vs
C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.585/ 2011 EX[DB]** dated 07-07-11 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. RAIPUR
CENTRAL EXCISE BUILDING,
DHAMTARI ROAD, TIKRAPARA,
RAIPUR 492001.

2. Adv. / Consult SH. MANISH S. ADV.,
c/o **MR.RAMESH NAIR**
LAKSHMI VIHAR, AG- 192, SCHEME NO. 54, VIJAYNAGAR, INDORE(MP)

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 (Harvana)
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. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

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

Date of hearing/decision 07.07.2011

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

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?	No

Excise Appeal No. 573 of 2005
[Arising out of order in Appeal No. 235/RPR-I (JBP)/2004 dated 04.10.2004 passed by the Commissioner (Appeals) Central Excise, Raipur]

M/s A.C.C. Limited — Appellants

Vs.

CCE, Raipur — Respondent

Appearance:

Rep. by Sh. Manish S. Advocate for the appellants.
Rep. by Sh. R.K. Verma, DR for the respondent.

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President
Hon'ble Sh. M. Veeraiyan, Member (Technical)

FINAL-ORAL ORDER NO. 585/2011-EX

Per: Shri M. Veeraiyan:

Heard both sides.

2. The appellant claimed benefit of exemption on HAR Cement, Refractories, Mortars & Concentrate, Prepared Refractory Bricks and Refractory Bricks under Notification No. 3/2001-CE dated 01.03.2001 (Sl. No. 254) List 5. The authorities below held that the impugned items cannot be considered as parts of conversion device producing energy as claimed by the appellant.

3. Learned Advocate reiterating the grounds of appeal, submits that kiln/ furnace is an industrial conversion device for producing energy and if the kiln is not operative no energy can be produced which is required for use in the manufacture of final product. He submits that the impugned items should be treated as parts consumed within the factory of production for manufacture of industrial device producing energy.

4. Learned DR reiterates the findings and reasoning of the Commissioner (Appeals).

5. The submission that kiln /furnace is to be treated as industrial conversion device for producing energy appears farfetched. Further, the claim that the impugned items should be treated as parts for manufacture of industrial device producing energy appears not convincing. As rightly held by the Commissioner (Appeals), the appellants are engaged in the manufacture of refractories material and not any machine and machinery. They are not manufacturing any non conventional energy device or system

or waste conversion device energy as understood in common parlance. Therefore, the appellant has failed to prove that the impugned items can be covered as parts of any machinery producing non conventional energy device. Therefore, the exemption has been rightly stands rejected as unsubstantiated. We do not find any valid reason to interfere with the order of the Commissioner (Appeals).

6. Appeal is, therefore, rejected.

[Justice R.M.S. Khandeparkar]
President

[M. Veeraiyan]
Member [Technical]

Pant