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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

STAY Application No. : E/Stay/907/2012
Appeal No. : E/750/2012-EX[DB]

Dated: **26/06/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
JK LAKSHMI CEMENT LTD
P.O Jaykaypuram, Distt- sirohi(Raj)

JK LAKSHMI CEMENT LTD (Appellant)

VS

C.C.E. JAIPUR II (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/715/2012-EX[DB]** & STAY ORDER NO. 966/2012-EXdated **18/06/2012** passed by the Tribunal under section

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. Advocate(s) / Consultant(s): SH. K. K. ANAND, ADV., A-103, DEFENCE COLONY, 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 Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-3

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

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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: 18.06.2012

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. Rakesh Kumar, 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.	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Excise Appeal No. 750 of 2012 with Excise Stay No. 907 of 2012

(Arising out of Order-in-Original No. 140/2010/C.Ex/JPE-II dated 24.11.2011 passed by the Commissioner, Central Excise, Jaipur).

M/s J.K. Lakshmi Cement Ltd. Appellants

Vs.

CCE, Jaipur-II Respondent

Present Shri K.K. Anand, Advocate for the appellant.
Present Sh. Nagesh Pathak, AR for the respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

STAY order No. 966/2012-Ex (BR)
FINAL Order No. A/715/2012-Ex (BR)

Per. Rakesh Kumar (oral):

The appellant are manufacturers of cement chargeable to Central Excise duty. They availed cenvat credit in respect of inputs and capital goods in or in relation to the final product. A show cause notice dated 28.7.2010 was issued to the appellant for denial of cenvat credit in respect of number of items of capital goods and demand of such wrongly taken cenvat credit amounting to Rs. 1,30,69,226/-, alongwith interest and imposition penalty on them. The show cause notice was adjudicated by the Commissioner vide order-in-original dated 24.11.2011 by which the cenvat credit demand of only Rs. 10,06,487/- was confirmed in respect of liner plate, nose ring segment, steel castings, tail ring segment, CIS plate, CFG plate, RFT plate, replaceable lip, HRCS grade 7 & 9, alongwith interest and the demand for the remaining amount was dropped. The Commissioner also imposed penalty of Rs. 2.50 lakh on the appellant. Against this order of the Commissioner this appeal alongwith stay application has been filed.

2. Heard both sides. Though, today this matter was listed for hearing of only the stay application, after hearing the same for some time, we were of the appeal itself can be taken up for final disposal. Accordingly, the requirement of pre-deposit is waived and with the consent of both the sides, the appeal is heard for final disposal.

3. Shri K.K. Anand, ld. Counsel for the appellant, pleaded that the cenvat credit has been denied in respect of liner plate, nose ring segment, steel castings, tail ring segment, CIS plate, CFG plate, RFT plate,

replaceable lip HRCS grade 7 & 9 etc. which are primarily used in klin to withstand very high temperature, that just because these items are mentioned as refractory items, the Commissioner has denied the cenvat credit on the ground that chapter 73 goods cannot be treated as refractory items, and that the Commissioner ignored their plea that these items are essential part of kiln system and since the kiln is an item of capital goods, the same being part of the kiln system has to be treated as capital goods, he pleaded that this point have not been considered by the Commissioner. He, therefore, pleaded that the impugned order is not correct.

4. Sh. Nagesh Pathak, ld. AR defended the impugned order by reiterating the findings of the Commissioner in it.

5. We have considered the submissions of both sides and perused the record. We find that in order to appreciate the contention of the appellant it would be useful to have a look on the relevant part of the impugned order whereby the cenvat credit was disallowed.

> **"I. <u>Refractories and Refractory materials</u>**
>
> **It has been submitted that refractory material viz fire bricks, high alumina fire bricks, ceramic products and perilax bricks are covered by Chapter 69 of the CET Act, 1985. Whereas refractory material viz castable, mortars, super cast accmar, whytheat C. Accommon LCC, castable refractories etc. are covered by Chapter 38 of the CET Act, 1985. They are commonly used in the prospect of the kiln for protecting shell and cyclone body from excessive heat. Similarly, segmental dip tube, lip plates, tail ring segment, nose ring segment, CIS**

plate, CFG plate, RFT plate, replaceable lip etc. (Chapter 73) in the form of steel castings of HRCS Grade 7 & 9 are primarily used in pre-heater, kiln and cooler to withstand very high temperature. It has been contended that from the definition imported to "Capital Goods", it is clear that the aforementioned refractories and refractory materials are specifically covered by sub-clause (v) of the clause (a) of Rule 2 of Cenvat Credit Rules, 2004.

I find that refractories and refractory materials are specifically covered by clause (v) of Rule 2(a) of Cenvat Credit Rules, 2004. I also find that in the case of Dwarikesh Sugar Industries Ltd. vs. CCE, Meerut-II reported in 2009 (243) ELT 573 (Tri. Del.) even quick setting cement used in place of refractory material in boilers cement has been held to be covered by definition of "Refractory and Refractory materials" under rule 2(a) of Cenvat Credit Rules, 2004. However, on going through the items of Annexure-'C' to their reply, I find that cenvat credit amounting to Rs. 10,06,487/- involved on goods of chapter 73 such as liner plate, nose ring segment, castings, steel castings, dip tube, locking plate, housing liner, breaker liner, blow bar, sector for kiln feed and shield plates etc. has also been availed by the assessee, treating them as refractory and refractory materials. The aforementioned items of chapter 73 cannot be treated and considered as refractory items. Accordingly, I hold that cenvat credit to the extent of Rs. 10,06,487/- involved on the said goods of chapter 73 as detailed in Annexure-C to their reply, claimed to be refractories / refractory materials is not admissible, hence disallowed. However, the availment of cenvat credit to the extent of Rs. 53,16,137/- in respect of refractory

goods of Chapter 69 (Rs. 39,06,164/-) and Chapter 38 (Rs. 14,09,973/-) only is in order as far as admissibility of cenvat credit in respect of refractories and refractory materials is concerned".

6. On reading of above, we find that the Commissioner has disallowed the cenvat credit only on the ground that the items in respect of which the appellant had availed cenvat credit were not refractories but items covered under chapter 73 of the Central Excise Tariff, The Commissioner has not considered the appellant's plea that these items are essential parts/components of the kiln system which being a chapter 84 items, is an item of capital goods. Therefore, the order cannot be sustained and accordingly we accept the appeal and remit the matter back to the Commissioner concerned for readjudcation on the aforesaid aspect after considering the plea of the appellant that aforesaid items have been used essentially as components/ parts of the kiln system.

7. Appeal as well as stay application are disposed of accordingly.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant