FAX : 011-26108426

REGISTERED / AD

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

Dated: **06/12/2012**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/1352/2012-EX[DB]** dated **23/11/2012**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Asstt. Registrar(EXCISE Appeal Branch)

Name and Address of Respondent

1 E/3275/2012 **Bhilai Jaypee Cement Plant**
(a Unit Of Bhilai Jaypee Cement Ltd.),
Babupur,
SATNA
(M.P.)

Name and Address of Appellant

2 **Commissioner of Central Excise and Service Tax-Bhopal**
48...ADMINISTRATIVE AREA,
ARERA HILL...HOSHANGABAD
ROAD,
BHOPAL,
MADHYA PRADESH
462011

Copy To
3 Advocate(s) / Consultant(s): SH. R.K. HASIJA, ADV, C/O. RESPONDENT

--

--

4 Bar Association, CESTAT, Delhi

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar(EXCISE Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING/DECISION : 23/11/2012.

Excise Appeal No. 3275 of 2012

[Arising out of the Order-in-Appeal No. 174/BPL/2012 dated 10/09/2012 passed by The Commissioner (Appeals), Central Excise, Bhopal.]

Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri 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 would 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 Department Authorities? :

CCE, Bhopal — Appellant

Versus

M/s Bhilai Jaypee Cement Plant — Respondent

Appearance

Shri Sanjay Jain, Authorized Representative (DR) – for the appellant.

Shri R.K. Hasija, Advocate - for the Respondent.

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

FINAL Oral Order No. A/1352/2012-EX(BR)

Per. Rakesh Kumar :-

In this case the respondent took Cenvat credit of Rs. 44,67,572/- in respect of railway tracks, concrete sleepers, brackets and connectors all used in the railway line connecting the manufacturing plant with the railway yards for transporting cement and clinkers. The Jurisdictional Additional Commissioner vide order-in-original dated 22/2/12 while denying the Cenvat credit and confirming its demand alongwith interest had imposed penalty of equal amount on the respondent. However, on appeal to Commissioner (Appeals), the Commissioner (Appeals) by the impugned order dated 13/9/12 while upholding the Cenvat credit demand alongwith interest, set aside the penalty on the ground that the dispute is purely of interpretation of the provisions of Cenvat Credit Rules. Against this order of the Commissioner (Appeals), the Revenue is in appeal against the portion of the Commissioner (Appeals)'s order setting aside the penalty.

2. Shri R.K. Hasija, Advocate, the learned Counsel appears on behalf of the respondent and submits that the appeal is without any basis and pleads for dismissal of appeal at admission stage.

3. Learned Shri Sanjay Jain, has submitted that the impugned order setting aside the penalty imposed by the Adjudicating Authority is not sustainable for the reason that there was no confusion about the interpretation of law relating to Cenvat credit. Thus, he has urged us to admit the appeal, set aside the

relevant portion of the impugned order and restore the order of the original Adjudicating Authority regarding penalty.

4. We have considered the submissions made by learned AR and perused the impugned order.

5. Learned Commissioner (Appeals) while dealing with the aspect of penalty and setting aside the same has observed thus :-

> "Now, coming to the imposition of penalty on the appellant, I find that the lower authority has imposed a penalty of Rs. 44,67,552/- i.e. equal to the amount of credit as determined under Rule 15 (2) of the Cenvat Credit Rules, 2004 readwith Section 11AC of Central Excise Act, 1944. Contesting the imposition of penalty, the appellant advanced the argument that they were under bonafide belief that credit on railway track is available to them as capital goods in light of the judgment of **Aditya Cement vs. Union of India – 2008 (221) E.L.T. 362 (Raj.)** which is squarely applicable to their case: that the railway track alongwith locomotives are indeed used as conveyor system; that there is no reason to suppress any information at any stage from the Department and neither did the appellant do so as the judgment of Aditya Cement operated in favour of the appellant which has not been overruled till date, that merely delayed submission of information after issue of summon, non-reversal of credit on the objection taken by the audit, or delayed taking of credit which has not been statutorily restricted are not justifiable grounds to impose penalty under Rule 15 (2) and Section 11AC. The appellant also contended that since the issue involves interpretation of legal provisions besides the absence of the element of *mens rea* or malafide intention

on their part, no penalty is leviable in light of various judgments. In the instant case, I find that there is not sufficient evidence that proves *mens rea* on the part of the appellant and the facts of records show that substantial interpretation of law is involved in this case. Hence, I find that it is a case of simply availment of inadmissible Cenvat credit taking place because of interpretation of Central Excise law as the appellant was of bona fide belief that the credit was admissible to them. In view of the facts and circumstances narrated above at length I hold that there was no ill intention of the appellant behind availing ineligible Cenvat Credit, as such, I set aside the penalty imposed under Rule 15 (2) of the Cenvat Credit Rules, 2004 readwith Section 11AC of the Central Excise Act, 1944."

6. On reading of the above, we find that Commissioner (Appeals) has set aside penalty on the ground that the appellant under mistaken interpretation of the provisions of law had availed of Cenvat credit. We do not find wrong in the aforesaid approach taken by the Commissioner (Appeals). Accordingly, we are not inclined to interfere with the order setting aside the penalty. Appeal is, therefore, dismissed *in-limine*.

(Dictated and pronounced in the open court.)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

PK