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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/837/2012
Appeal No. : E/398/2010-EX[DB]

Dated: **30/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
CENTURY CEMENT
P. O. Baikunth 493-116, Distt. Raipur (C. G.)

CENTURY CEMENT (Appellant)

VS

C.C.E. RAIPUR (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/882/2012-EX[DB]**, Stay/Order No. **SO/1161/2012** dated **19/07/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. **Respondent**
C.C.E. RAIPUR
Central Excise Building, Dhamtari Road,
Tikrapara, Raipur 492001.

2. **Advocate(s) / Consultant(s):**
Sanjay Grover
Law Offices, E-500, Greater Kailash-II,
New Delhi-110 048.

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
12. Office Copy
13. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI.

Date of Hearing/Decision:19.07.2012

Excsie Stay Application No.E/Stay/837 of 2012
In Appeal No.E/398 of 2010

M/s. Century Cement — Appellant

Versus

CCE, Raipur — Respondent

Appearance: Rep. by Shri R.K. Verma, AR for the appellant.
Rep. by Shri Sanjay Grover, Advocate for the respondent.

CORAM : Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Rakesh Kumar, Technical Member

STAY order No. 1161/2012-Ex(BR)
FINAL Order No. A/882/2012-Ex Dated : 19.07.2012

Per. D.N. Panda

Ld. Counsel is fair to state that the demand composition can be divided into two parts. The first category of demand is Rs.68,83,630/- pertaining to recovery on the ground of cenvat credit availed either on inputs or capital goods have been cleared as scrap. The second category of demand is Rs.21,32,622/- which related to certain goods although not finding place in Tariff Act, 1975, duty demand has been raised. The Authorities did not examine the allegation in threadbear but an unreasoned order was passed to raise the demand baselessly. For the unreasoned order, the appellant approached Hon'ble High Court of Chattisgarh for a re-look into the matter which resulted in the filing of present application. He reiterates his contention that when the appellant had not taken any credits in respect of the goods giving rise to M.S. Scrap, G.I. Scrap and Fire Bricks Scrap, there shall not arise recovery of demand of Rs.68,83,630/ . But he is fair to state that in respect of second category of demand of Rs.21,32,622/- in respect of Fire Bricks Scrap, Cable Scrap, White Metal Scrap, Battery Scrap and Rubber Scrap, the appellant has already deposited Rs.10 Lakhs before reaching to Tribunal and directing further deposit of Rs.5 Lakhs shall not prejudice interest of revenue to settle the dispute.

2. Per contra, Revenue reiterates the grounds appeared in the adjudication order.

3. We have perused paras 7.2 and 7.3 of the adjudication order and noticed that ~~[illegible]~~ defence of the appellant was that most of the items had not enjoyed credit. When this was the submission, the Authority failed to examine threabear how the concerned goods formed part of show cause notice and how Revenue was prejudiced. A bald adjudication order was passed which is demonstrated by para 7.3. The appellant was categorical to state that the scraps may be relating to 5 to 20 years old goods. Such contention also remained un-controverted in adjudication in absence of cogent evidence by Revenue to base adjudication. The Adjudicating Authority has failed in his duty to test the veracity of the show cause notice.

4. When our observation as above was made clear to the Revenue in the course of hearing, it was agreed by ld. DR that the matter may go back for

examination of the goods in question to reduce the litigation expeditiously since show cause notice was issued on 19.01.2009.

5. Keeping in view the arguments of both sides and balance of convenience tilting in favour of the assessee, we consider that the direction for deposit of Rs.5 Lakhs within four weeks by the appellant shall serve the purpose of revenue to hear the appellant elaborately for passing a reasoned and speaking order. This direction is in addition to Rs.10 Lakhs said to have been deposited by the appellant subject to verification.

6. The appellant making deposit as above, shall produce the challans before ld. Adjudicating Authority within two weeks of the deposit and make an application to that Authority for fixation of date of hearing. Looking to our anxiety expressed above, ld. Authority shall fix the matter early to pass an order within three months of last date of hearing. It is needless to state that the appellant shall be entitled to reasonable opportunity of being heard.

7. In the result, stay application is disposed in the matter indicated above and the appeal is also disposed remanding the matter to the ld. Adjudicating Authority.

[Dictated and pronounced in the open court]

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

Ckp.