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

COURT-I

Date of hearing/Decision: 25.07.2017

Appeal No. E/1700/2011 EX [DB]
[Arising out of the Order in Appeal No. 125 (DKV)CE/JPR-I/2011 dated 05/04/2010 Passed by The Commissioner (Appeals),Central Excise, Jaipur]

M/s Manglam Cement Ltd … Appellant

Vs.

CCE Jaipur-I … Respondent

Appearance:
Present Ms. Rinki Arora, for the appellant
Present Shri M.R. Sharma, DR for the respondent

Coram: Hon'ble Justice Dr. Satish Chandra, President
Hon'ble Mr.Ashok K.Arya, Member (Technical)

FINAL ORDER No. 55650/2017

Per:Justice Dr. Satish Chandra

1. The present appeal is filed against Order in Appeal No. 125/2011 dated 05/04/2011. The period of dispute is October 2008 to March 2009.
2. Brief facts of the case are that:
   i. During the period under consideration, the appellant was engaged in the manufacture of cement. The appellant was availing the benefit of Notification No. 04/2006 dated 01/03/2006 of concessional rate of duty under S. No. 1 C of the said notification. The appellant claims that they are selling these goods to industrial and institutional consumers, who are entitled to clear the goods on

payment of concessional rate of duty. The department has denied the said concessional rate of duty.

3. With the above background of facts, heard Ms Rinki Arora, Ld. Counsel for the appellant and Shri M.R. Sharma, Ld DR for the revenue.

4. After hearing both the parties it appears that benefit of the Notification/ Serial No. 1 C has been denied on the background that goods were supplied to the builders and used in the construction of building and as such could not be covered by the said Serial Number. I C of the Notification. During the course of arguments, both parties have agreed that goods were partly used for the industrial buildings and partly for the individual use. From the appeal record, it is not clear as to how much percentage of the goods is entitled to get the benefit. It is also not clear whether the use of goods was for construction of building for industrial/institutional purpose as per the notification. Out of the total 14 buyers it is not clear how many used the goods for the industrial/ institutional buildings. When it is so, then the impugned order in this regard is set aside and the appeal is remanded to the Adjudicating Authority to decide the issue afresh after verifying the fact of the consumption of the cement as required by the notification. For claiming the benefit of notification, the Ld Counsel has agreed to submit the necessary evidence before the Adjudicating Authority.

5. Consequently, the impugned order is set aside and the matter is remanded to the Original Adjudicating Authority to decide the issue afresh after examining the entire evidence; but by providing necessary opportunity of personal hearing to the

appellant. Fresh evidence, if need be, may be submitted as per law.

6. In the result, appeal filed by the appellant is allowed by way of remand.

[Order Dictated and Pronounced in the open court]

(Ashok K. Arya)
Member (Technical)

(Justice Dr. Satish Chandra)
President

RS