CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH-COURT NO. 3

SINGLE MEMBER

Excise Appeal No. 53568 of 2018-EX(SM)

[Arising out of Order-in-Appeal No. 337(SM) CE/JPR/2018 dated 26/07/2018 passed by Commissioner (Appeals) Jaipur]

M/s Shree Cement Limited **Appellant**
SP3-II, A-1, RIICO Industrial Area
Khushkhera, Bhiwadi

Versus

Commissioner of Central Excise &
Service Tax, Jaipur-I **Respondent**
NCR Building, Statue Circle,
C-Scheme, Jaipur, Rajasthan-302005

Appearance

Shri Vivek Sharma, Advocate for the appellant
Ms. Tamana Alam, Authorised Representative for the Respondent

CORAM: **Hon'ble Shri Ajay Sharma, Member (Judicial)**

Date of Hearing: 30.04.2019
Date of Decision: 30.04.2019

Final Order No: 50601/2019

Per Ajay Sharma

1. The instant appeal has been filed against the impugned order dated 23/07/2018 passed by the Commissioner (Appeals) Central Excise Goods and Service Tax, NCR Building, Statue Circle, Jaipur, Rajasthan.

2. The only issue to be decided in this Appeal is about the admissibility of Cenvat Credit taken on cement returned back in the damage condition. The period in dispute is January, 2011 to August, 2014.

3. I have heard learned counsel for the appellant and learned authorised representative for the Revenue and perused the records.

4. The Learned Counsel has shown me the decision of this Tribunal in Appellant's own case on identical issue in which this Tribunal vide **Misc. Order No. 637 of 2008–EX(SM) dated 03.07.2008** decided the appeal in favour of the appellant and held as under;

> *"6.We have carefully considered the submissions from both sides. At the outset, we find that the tour note of the Deputy Chief Chemist dealt with damaged cement relating to another company. The Deputy Chief Chemist, in the said note, has specifically held that the damaged cement has already set. However, the Chemical Examiner in his report relating to the appellant has only mentioned that the cement has setting properties. This cannot be construed as meaning that the cement has already set and it cannot be reprocessed. The nature of reprocessing claimed by the appellant is feasible. If the damaged is mixed with good cement and subjected to grinding, as claimed by the appellant, then the claim of recovery of cent per cent by weight of the damaged cement is possible. It is not denied that the original consignment has been cleared on payment of duty. The clearances subsequently were of quantities equal to the quantities already cleared on payment of duty and claimed to have been received for the purpose of reprocessing. We hold that the appellant is eligible for the benefit as envisage under Rule 96-ZV."*

5. Thereafter, again recently for the period January, 2016 to June, 2017 the Department while relying upon the decision of the Tribunal as aforesaid, decided vide Order-in-Original dated 4.04.2018 the same issue in favour of the appellant. Learned Authorised Representative on behalf of Revenue on other hand reiterated the findings recorded in the impugned order.

6. I have gone through both the decisions and satisfied with the observations of the Tribunal that the Deputy Chief Chemist has dealt with the damaged cement relating to some other company, and

therefore, the report in relation to some other company cannot be applied on the facts of the appellant's case.

7. Therefore, following the decision of this Tribunal as aforesaid and in view of the facts and circumstances of the case the appeal filed by the appellant is allowed with consequential relief, if any.

(Dictated and pronounced in open court)

(AJAY SHARMA)
MEMBER (JUDICIAL)

Tejo