

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO. 1

CUSTOMS Appeal No. 11901 of 2017-DB

(ARISING OUT OF OIO-01-NKU-01-ADG-ADJ-DRI-N-DELHI-2017-18 DATED-08.05.2017 PASSED BY COMMISSIONER (APPEALS) COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX-DELHI - I)

C.C.,-KANDLA

CUSTOM HOUSE,
NEAR BALAJI TEMPLE,
KANDLA, GUJARAT

.....Appellant

VERSUS

SHREE CEMENT LTD

21-STRAND ROAD
KOLKATA, BANGAL-700 001

.....Respondent

APPEARANCE:

Shri V.G. Iyengar, Superintendent (Authorized Representative) appeared for the Appellant

Shri P.D. Rachchh, Advocate for the Respondent

**CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)
HON'BLE MR. SOMESH ARORA (JUDICIAL)**

Final Order No. A/ 10919 /2023

DATE OF HEARING:17.04.2023

DATE OF DECISION:17.04.2023

SOMESH ARORA

The department in the instant case has come up in appeal against non appropriation of amount paid for the period prior to 12.01.2012 by the adjudicating authority. The adjudicating authority in this matter while confirming the demand within extended period of limitation of 5 years did not demand duty nor appropriate the above stated amount being beyond the period of 5 years of limitation. The department considering that the amount was paid voluntarily and seeking to rely upon the decision of Indian Cement Ltd. 1984 (18) ELT 499 (Tri.) has come out with a plea that even if an amount has not been demanded but was voluntarily paid, same should have been appropriated by the adjudicating authority. As against this, the learned advocate has sought to rely on the decisions of Crown Lifters 2015 (328) ELT 590 (Tri Mum.) (para 7) and Pilmen Agents (P) Ltd. As reported in 2000 (126) ELT 79

(Mad.) to emphasize that only that amount can be appropriated which is actually demanded and confirmed by the authority as duty.

2. We have considered the rival submissions. We find that the case law relied upon of Indian Cement Ltd. by the department is an older case pronounced in the year 1984 whereas the latest flow of decisions established after the unjust enrichment provisions were brought in, clearly indicate that what can be appropriated is what is demanded as dues of the department. Therefore, we agree with the learned advocate that order passed under the facts and circumstances of the matter by the adjudicating authority was correct and appropriate in law. We specifically mention that we are not deciding any issue of applicability of refund or its limitation or of jurisdiction etc., as the same is not an issue before us. For the limited purpose of the appeal of the department, we hold that to appropriate an amount, the same must be demanded as legitimate duty or dues by the department, first. Accordingly, appeal is dismissed.

(Dictated and Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Neha