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Jaypee Rewa Cement Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-12-1997

Reported in : (1997)(95)ELT429TriDel

Appellant : Jaypee Rewa Cement

Respondent : Commissioner of Central Excise

Judgement :

1. The present appeal pertains to taking of Modvat credit on explosives and furnace oil. The appellants are engaged in the manufacture of cement. They claimed Modvat credit of duty on the use of explosives in the mining area and furnace oil used in generation of electricity and its subsequent use in the manufacture of cement. The department alleged that Modvat credit will not be admissible on explosives as the same were not used in the factory premises and that Modvat credit will not be admissible on furnace oil as it is not directly used in the manufacture of Cement.

2. Shri N. Madhava Rao, the ld. Counsel appearing for the appellants, submits that insofar as admissibility of Modvat credit on explosives is concerned, their case is fully covered by the decision of the Tribunal in the case of AC.C. Limited v. Collector of Central Excise, reported in 1991 (55) E.L.T. 415; in the case of Indian Rayon & Industries Ltd. v. CCE, reported in 1995 (76) E.L.T. 358 and also in the case of CCE v.Maihar Cement Limited, reported in 1997 (21) RLT 564.

3. The ld. Counsel submitted that insofar as the claim of Modvat credit on furnace oil is concerned, Rule 57A provides that inputs used as fuel are included for the purpose of JV Modvat credit. Describing the process, the ld. Counsel submitted that fuel oil is used for generation of electricity which further is used in the production of Cement. He referred to the Notification No. 352/77-C.E. and submitted that this Notification granted exemption to items falling under Chapter Heading 6 to 11A of the erstwhile tariff when used as a fuel within the same premises and that while dealing with this notification, this Tribunal in the case of Indian Oil Corporation Ltd. v. CCE, reported in 1985 (19) E.L.T. 145, held that fuel used for generation of electricity will also get the exemption. The ld. Counsel submits that this judgment has been further followed by the Tribunal in their Order No. 552-554/88-C and Order No. 646-653/85-C. He submitted that Modvat credit is admissible on goods which are used as inputs in or in relation to the manufacture of final product. He submits that furnace oil is used in the generation of electricity and electricity is further used in the manufacture of the cement. He submits that inputs for generation of electricity used within the factory of production or for any other purpose are included in Rule 57A with effect from 16-3-1995; that the Tribunal in its judgment held that if certain items are included as capital goods with effect from a particular date that does not mean that the item happened to be a capital goods only from that date and it was not to be treated as a capital goods before that date. He submitted that inputs for generation of electricity specifically were covered with effect from 16-3-1995, but that does not mean that they were not covered, especially in view of the fact that even from 1-3-1994 for purposes of Rule 57A inputs used as a fuel were included. The ld.Counsel therefore, prayed that the appeal may be allowed. Shri P.K.Jain, the ld. SDR reiteated the findings of the lower authorities.

4. Heard the submissions of both sides. Looking to the facts and the vise of fuel oil and also the fact that the terms used 'in or in relation to' are wide enough, as also to the fact that fuel were treated as inputs if they were used in the process of manufacture, we hold that furnace oil is an input and thus, is admissible for Modvat credit. Accordingly the appeal is allowed.

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