

Ramuka and Bhageria Cement Pvt. Vs. Commr. of C. Ex.

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SooperKanoon Citation : sooperkanoon.com/16392

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-05-1999

Reported in : (2000)LC135Tri(Delhi)

Appellant : Ramuka and Bhageria Cement Pvt.

Respondent : Commr. of C. Ex.

Judgement :

1.1 The appellants herein are manufacturing cement from clinker. It is also manufactured by them but entirely used captively for manufacture of cement.

(i) Regarding rate of duty on cement, the final product manufactured by the appellants; and (ii) regarding rate of duty on clinker, i.e. it should bear some duty or not.

2. At the outset, learned Consultant, Shri R. Pal Singh submits that the appellants do not want to contest the question of rate of duty on cement. Accordingly, to this extent, their appeal is dismissed.

However, he contests the question of charging duty on clinker which is used entirely for captive consumption for manufacture of cement.

Learned Consultant submits that this question is no longer res Integra insofar as the Tribunal is concerned. He submits that by virtue of Explanation VI, the goods manufactured within the factory and captively used for manufacture of specified goods covered by Notification 1/93 are not to be taken into account for the

purpose of charging duty. This explanation has been held by the Tribunal in a number of judgments as giving exemption to goods manufactured within the factory and captively used. For this proposition, learned Consultant relies on two judgments of the Tribunal :-J.G. Engineers v. Collector of Central Excise, Meerut.

2. 1999 (32) R.L.T. 645 - Olympic Bearing P. Ltd. and Ors. v. Commissioner of Central Excise, Rajkot.

Leading judgment, on this issue by the Tribunal is in the case of Dukart and Company (P) Limited v. Collector reported in 1987 (29) E.L.T. 446 (Tribunal).

2.1 Apart from the aforesaid judgments, learned Consultant also draws attention to Commissioner of Central Excise & Customs, Cochin, Trade Notice No. 148/95, dated 21-12-1995 (Vol. 81 E.L.T. T29) wherein a similar view has been taken by the Commissioner in the said Trade Notice which obviously must have been issued on the basis of some circular of the Board, submits learned Consultant.

2.2 In view of the foregoing submissions, learned Consultant prays for allowing the appeal so far as duty liability on clinker is concerned.

3. Opposing the contention, learned JDR, Shri Ravinder Babu reiterates the finding of the lower authority which has held that Explanation VI to Notification 1/93 merely states that value of goods manufactured by the appellants within the factory and captively consumed in the manufacture of specified goods covered by Notification 1/93 are not to be taken into account. This Explanation cannot be read as giving an exemption to the goods manufactured within the factory and captively consumed unless there is a Notification.

4. We have carefully considered the pleas advanced by both sides. We agree with the submissions of the learned Consultant that the issue before us regarding duty liability on clinker is fully covered in the appellants favour by the aforesaid judgments of the Tribunal.

Consequently, we allow the appeal insofar as the question of duty liability on clinker is concerned, namely, that no duty devolves on clinker manufactured by the appellants which is used captively in manufacture of cement.

