

Commissioner of Central Excise Vs. Diamond Cement

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-31-2000

Reported in : (2001)(127)ELT777TriDel

Appellant : Commissioner of Central Excise

Respondent : Diamond Cement

Judgement :

1. Revenue filed these appeals against the order-in-appeal passed by the Commissioner (Appeals). In the impugned order, the benefit of Modvat credit in respect of explosives used in mines and in respect of hydra- zine hydrate used for softening the water, which was used in generation of electricity was denied.
2. Ld. DR, appearing on behalf of the revenue, submits that the issue in respect of Modvat credit on explosives used in mines by the cement manufacturers is settled by the Larger Bench of the Tribunal in the case of Jaypee Rewa Cement reported in 2000 (38) RLT 1111.
3. In respect of hydrazine hydrate. Id. DR submits that it is not used as input in the manufacture of final product and, therefore, is not entitled for the benefit of Modvat credit.
4. Ld. Counsel appearing on behalf of the respondents, submits that in the show cause notice, issued to the respondents, the allegation is that the respondents were availing the benefit of Modvat credit in respect of hydrazine hydrate without

filing any declaration, whereas in the impugned order, the lower authority held that it is not entitled for the benefit of Modvat credit. His submission is that the impugned order is beyond the scope of show cause notice. In respect of Modvat credit on explosives used in the manufacture of cement, he reiterated the findings of the lower authorities.

6. In the impugned order, the Commissioner (Appeals) allowed the benefit of Modvat credit in respect of explosives used in the mines.

The Larger Bench in the case of Jnypee Rewa Cement, relied upon by the revenue, held that explosives used in the mines by the cement manufacturers, are not entitled for the benefit of Modvat credit.

Therefore, the findings in respect of explosives used in the mines by the respondents, is not sustainable and is set aside.

7. In respect of Modvat credit on hydrazine hydrate in the show cause notice, the duty is demanded on the ground that respondents are availing the benefit of Modvat credit without filing necessary declaration under Rule 57G of the Central Excise Rules whereas the adjudicating authority held that hydrazine hydrate is not eligible input for the benefit of Modvat credit. As the allegation in the show cause notice is that hydrazine hydrate, was not entitled for the benefit of Modvat credit as respondents were availing the benefit without any declaration and the adjudicating authority held that it is not eligible input, the finding of the adjudicating authority is beyond the scope of show cause notice. Commissioner (Appeals) gave a specific finding that hydrazine hydrate is an input entitled for the benefit of Modvat credit. It is not disputed by the revenue that these chemicals were used for treatment of water and, subsequently, the water was used for generation of electricity and the electricity was used for the manufacture of cement. The treatment of water is necessary for proper maintenance of boiler. Therefore, this chemical is entitled for the benefit of Modvat credit. The appeals, filed by the revenue, is partly allowed as indicated above.