SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Chief Engineer Ranjit Sagar Dam Vs. Cce

Chief Engineer Ranjit Sagar Dam Vs. Cce

SooperKanoon Citation : sooperkanoon.com/18792

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-02-2000

Reported in : (2000)(72)ECC145

Judge : G B Deva, B T K.K.

Appellant : Chief Engineer Ranjit Sagar Dam

Respondent : Cce

Judgement :

1. This stay application is filed by the applicants for waiver of pre-deposit of duty amounting to Rs. 27,97,12,331.82 and penalty to Rs. 5,00,00,000.00 (Rupees Five crores) and stay of the recovery proceedings.

2. Arguing for the appellants Shri Vinay Garg, Advocate submitted that the point to be considered in this case is whether the item which was processed by the assessee amounts to manufacturing process and is liable to duty. He submits that Ranjit Sagar Dam Project Shapur Kandi is a project for construction of a dam in which concrete, sand, cement and steel is used as inputs. The project includes construction of Tunnels, Spillway, Power House and also Protection Works of the Dam of which "Natural/crushed Stone" was, amongst others, one of the required material for the making of 'Cement Concrete'. The Central Excise Preventive Party visited Ranjit Sagar Dam Project, Shahpur Kandi on 26.4.91 and observed that they were engaged in the construction of the dam of Ranjit Sagar Dam Project, for which they were concreting the tunnels, spillways, power house and protection

works of Ranjit Sagar Dam for which crushed stones were required. The appellants had installed stone crushers which were operated with the aid of power for crushing stones. The appellants were issued show cause notice alleging that the appellants had cleared crushed stone falling under sub-heading No. 2505.00 without payment of duty. Show cause notice duly answered by the party denying the charges stating that the activity undertaken by the appellants did not amount to manufacture. The proceedings were adjudicated by the Commissioner holding that the activity of the assessee did amount to manufacture and accordingly duty was demanded as per the impugned order.

3. Shri Garg submitted that beginning from the issue of show cause notice department has proceeded with the assumption that appellants has carried out manufacturing process involving "Ready Mix Concrete". He said that the product in the present case is a 'concrete mix' and not ready mix concrete. He submitted that in reply to the show cause notice it was specific plea was taken that a product is only concrete mix but the assessing authority has not applied his mind to the basic issue whether it is a Ready Mix Concrete or Mix concrete. He had proceeded as if it was Ready Mix Concrete and adjudicated accordingly. He submits that the order is not a speaking order since he has not dealt with the basic issue.

4. Shri Garg drew our attention to Circular No. 368/1/98-CX dated 6.1.98 which was relied by the appellant even before Commissioner, particularly in para 6 therein which is as under: The matter has been examined and concrete mix implies the conventional method of concrete production conforming to the ISI standard 456-1978, which is produced and used at the site of construction. It is this concrete mixture, manufactured at the site of construction which is fully exempt vide Notification No. 4/97-CE, dated 1.3.1997 (S.N. 51). It is thus clarified that ready mix concrete or pre-mixed concrete, by its vary nature, cannot be manufactured at the site of construction and is brought from the factory of manufacturer for use in construction.

5. Shri S.P. Rao, appeared for the Revenue justified the order passed by the Commissioner and submitted that the product manufactured by the assessee was Ready Mix Concrete and item Ready Mix Concrete is liable to duty as it is not

covered by the Circular referred to by the other side.

6. We have carefully considered the matter. After hearing both sides with reference to stay petition we felt that the matter itself can be disposed of and accordingly amount required to be deposited for the purpose of hearing the appeal is dispensed with and the main matter was taken up for regular hearing.

7. The Commissioner has proceeded to pass an order to decide the issue whether the Ready Mix Concrete falls within the ambit of the meaning of the word "manufacture" as envisaged under Section 2(1) of the Act to attract duty. In para 11 of the impugned order he observed that it is not correct to say that Ready Mix Concrete cannot be manufactured at site of construction and is brought from factory of manufacture for use in the construction. We find that the party has taken a specific plea before the authorities that what they carried out with reference to the manufacturing process of the product was not 'Ready Mix Concrete' but only 'Concrete Mix'. This is a basic issue has not been dealt by the Commissioner in the Impugned Order. The basic point is whether a product in question is Ready Mix Concrete or Concrete Mix. Without going into this issue he has proceeded to pass an order that what the product manufactured by the assessee was 'Ready Mix Concrete'. In the facts and circumstances and discrepancies and in the absence of finding on the point at issue we are of the view that matter will have to go back for re-consideration. Accordingly we are reminding (sic) [remanding] the matter to the concerned Commissioner to examine the basic issue at first and to pass an order in accordance with law after providing an opportunity to the appellant. The appellant may make use of this opportunity and substantiate their claim during the re-adjudication proceedings including all the issues relating to the excisability.

8. Thus, this appeal is disposed of in the above terms. Stay petition also gets disposed of accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com