

Jaypee Bela Cement Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-20-2000

Reported in : (2001)(128)ELT225TriDel

Appellant : Jaypee Bela Cement

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal arises out of and is directed against the order in appeal dated 14-3-2000 passed by the Commissioner of Central Excise (Appeals), Bhopal.
2. The appellants are engaged in the manufacture of cement falling under Chapter 25 of the Central Excise Tariff Act, 1985. At the time of construction of the plant for the manufacture of cement, the appellants undertook manufacture of cement concrete blocks and parts of cement machinery. They claimed benefit in terms of Notification No. 36/94 in respect of cement concrete blocks and similarly claimed benefit in respect of parts of cement manufacturing machinery in terms of Notification No. 67/95, dated 16-3-1995.
3. The benefit in terms of Notification No. 36/94 has been denied on the ground that the manufacturing activity was carried out at the pre-cast yard which was quite away from the plant where the construction work was carried on. On this issue Shri G. Shivdass, Id.Advocate submitted that the very issue has already been considered by the Tribunal in the case of M/s. U.P. State Bridge Corporation Ltd. v.CCE, Chandigarh -II reported in 2000 (40) RLT 833 (CEGAT) holding that

"the expression manufactured at the site of construction used in these notifications in question, has to be interpreted liberally, so as to admit within its ambit the site allotted to the contractors for manufacturing the goods to be used in the construction work as such site, under the terms of agreement". He referred to the para 11 of the said order which reads as under :- "11. The Commissioner has disallowed the benefit of above referred notifications to the appellants on the ground that the casting of beams used in the construction of arterial expressway corridor project was not made by the appellants at the site of construction rather it was done at the site away from the place of construction.

But his this view cannot be subscribed and must be held to be erroneous. He has placed a very narrow interpretation on the expression "at site" as used in the above referred notifications by losing sight of well known principle that where a particular notification had been issued for extending the benefit to the assessee, it must be interpreted in such a manner that the intended benefit is actually enjoyed/availed by them and not that they are practically deprived of the same, by the authorities implementing the said notification. The above referred notifications exempting the goods manufactured at the site of construction for use in the construction work at such site, had been issued by the Government with the sole object of extending their benefits to the companies/contractors engaged in the construction of the flyovers, bridges etc. The expression 'manufactured at the site of construction' used in these notifications in question, has to be interpreted liberally, so as to admit within its ambit the site allotted to the contractors for manufacturing the goods to be used in the construction work at such site, under the terms of agreement".

4. Shri D.K. , Id. SDR tried to distinguish the case law referred to above but in vain.

5. On going through the case law referred to above with reference to the first issue we do not find any justification in denying the benefit in terms of the Notification No. 36/94. Accordingly, the appellants succeed on the first issue.

6. As regards Notification No. 67/95 the benefit has been denied on the ground that the assessee have no factory of production of cement. In this context Shri G. Shiv Dass referred to the relevant Notification No. 67/95 and read the relevant portion

which is as under:- "(i) capital goods as defined in rule 57Q of the Central Excise Rules, 1944 manufactured in a factory and used within the factory of production;" He submitted that factory of production refers the items produced in the factory and not the finished product as understood by the department. Or going through the relevant notification and wordings Shri D.K. Verma, Id. SDR has nothing to argue further. Shri G.Shivdass, Id. Advocate also referred to the decision by the Tribunal in the case of Triveni Engineering Works Ltd. v. CCE reported in 2000 (36) RLT 619 in support of his contention. There is some force in the arguments advanced on behalf of the assessee that Notification No.67/95 grants exemption to capital goods manufactured in the factory and used within the factory of production. In view of the matter we do not find any justification to deny the benefit in terms of Notification No.67/95. Accordingly, appellants succeed on this issue also.

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