

Ajanta Cements Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-04-1985

Reported in : (1985)(5)LC1876Tri(Delhi)

Appellant : Ajanta Cements

Respondent : Collector of Central Excise

Judgement :

1. The facts in brief are that the appellants started manufacturing the product known as 'Plastwel' some time in the year 1982, but they did not obtain any Central Excise licence under the belief that it would be covered under Tariff Item No. 68 and exempted. On 28-4-1983, the Assistant Collector of Central Excise, Ranchi, issued a show cause notice C.No. V(23)(15)29/83/2990 to the appellants, alleging inter alia that they had contravened the provisions of Rules 174, 9, 52-A, 226, 173-B, 173-C, 173-F and 173-G of Central Excise Rules, 1944, inasmuch as they had manufactured and removed a variety of cement known as 'Plastwel' falling under Tariff Item No. 23(2)-C.E.T. without having proper licence in form L-4 and without fulfilling other formalities under the various provisions of the Central Excise Law. It was alleged in the notice that the party had removed 232 bags each containing 50 kg. of 'plastwel' (cement) during the period from 13-8-1982 to 25-3-1983 valued at Rs. 68,059.08 involving Central Excise duty amounting to Rs. 29,945.99 by resorting to mis-statement.

2. The appellants in their reply mentioned that they never made any mis-statement; that they had submitted all the information which they were asked to

submit and that their product was not cement but was a substitute for cement. They had obtained the know-how from the Birla Institute of Technology and the Small Industries Research Training & Development Organisation who had developed substitute for cement. In respect of the classification of their product, the appellants stated that the same is not cement and, therefore, it did not fall under Tariff Item No. 23. The product manufactured by them is made from granulated blast furnace slag, fly ash. The granulated slag obtained from steel plants and fly ash are mixed with lime and gypsum in a certain proportion and then ground in a ball mill. A product cannot be called to be a cement which is made without using certain proportion of portland, clinker or portland cement. The cement as it is understood in the engineering and common parlance is a product which is made by calcination of some material or mixture or materials which contain lime, silica, alumina and clay. Calcination of clinker formation is a must in the manufacture of cement. Gypsum is added to control the setting properties. The product which the appellants manufactured is classifiable under Tariff Item No. 68 of the Central Excise Tariff but exempted.

3. The Deputy Collector did not accept the contention of the appellants and by his Order-in-Original No. 9/83 dated 6/7-12-1983 held that the product 'plastwel' manufactured by the appellants should be treated as a variety of cement and, therefore, should fall under Central Excise Tariff Item No. 23(2) and not under Item 68. He confirmed the demand of excise duty amounting to Rs, 29,945.99 under Rule 9(1) of the Central Excise Rules, 1944. A penalty of Rs, 500 was also imposed under Rule 173-Q(1) of the Central Excise Rules, 1944.

4. Being aggrieved by the said order of the Deputy Collector, the appellants filed an appeal before the Collector of Central Excise, Calcutta, who by his Order-in-Appeal No. 286/.BR/84 dated 29-5-1984 confirmed the findings of the Deputy Collector that the product manufactured by the appellants is a cement falling under sub-item (2) of Item 23 of the Central Excise Tariff'. However, he ordered that the demand for arrears of duty should be modified on the basis of price list No. 1/83 effective from 27-6-1983 approved @ Rs. 24.50 per bag of 50 Kgs.

5. Not satisfied with the said order passed by the Collector of Central Excise (Appeals), the appellants filed appeal before this Tribunal alleging therein that in the absence of definition for cement in the Central Excise Tariff, whether or not a particular product is cement is to be decided in accordance with the trade practice, i.e., whether or not the particular product is known as cement. Cement as known and recognised in the trade is always made first by fusing the basic raw material into clinkers. In some of the varieties developed in recent years like blast furnace slag cement, a certain percentage of such clinkers is mixed with granulated blast furnace slag and gypsum. In some cases a certain proportion of portland cement is mixed with given granulated blast furnace slag. But invariably a certain percentage of clinkers or ordinary portland cement is always necessary for manufacturing cement. It has been alleged that the appellants neither used any clinkers nor mixed any portland cement with the ground blast furnace slag, fly ash and gypsum and, therefore, their product cannot be classified as cement under Tariff Item 23(2) of the Central Excise Tariff.

6. We have heard Shri R.B. Sinha, Consultant for the appellants and Shri S.N. Khanna, J.D.R. for the Department and gone through the record.

7. According to Shri Sinha, the learned Consultant, the product of the appellants is made of 80% granulated slags, 3% fly ash, 15% lime and 2% gypsum. This is grounded in a Ball Mill and packed in bags and marketed. The product is used as a substitute for cement. According to Shri Sinha, cement as known and recognised in the trade is always made first by fusing basic raw materials into clinkers. According to Shri Sinha, gypsum is the only material which they are using in the manufacture of their product, which is also essential for the manufacture of cement. Blast furnace slag and fly ash, are not assential materials in the manufacture of cement nor they are used as raw materials in the manufacture of bulk of the cement produced in the country where it is made from limestone. In the manufacture of cement, certain percentage of clinkers is always necessary. But the appellants neither used any clinkers nor mixed any portland cement with the ground blast furnace slag, fly ash and gypsum and hence this product cannot be termed as cement classifiable under Item 23(2) of the Central Excise Tariff. This product is classifiable under item 68, but exempted from payment of excise duty.

8. Shri Khanna, the departmental representative, countered the arguments of Shri Sinha, and drew our attention towards the report of the Chemical Examiner which is dated 26-2-1983. As per this report, the sample was found to be in the form of grey coloured very fine powder, slightly gritty in nature. This product was found to be an intimate mixture of blast furnace slag type material, lime with some amount of gypsum. When it is mixed with water, it shows plasticity and shows setting property which is not very hard as compared to ordinary portland cement, Shri Khanna pointed out that the Chief Chemist found this product, as a type of cement and, therefore, it is classifiable under Tariff Item 23(2) of the Central Excise Tariff which mentions about all other varieties of cement. Shri Khanna also drew our attention towards Encyclopaedia of Chemical Technology by Kirk-Othmer, Vol. 5, wherein at page 187 "Nonportland Cement" has been mentioned.

According to Shri Khanna, it is not necessary that the cement should be portland. There are many varieties of cement. Supersulfated cement contains about 80% slag interground with 15% gypsum or anhydrite and 5% portland cement clinker. He pointed out that in the grounds of appeal in para 2, the appellants have themselves admitted that the materials which they use in the manufacture of their product are also used in the manufacture of cement. Gypsum is one of the most essential material in cement as also in the product manufactured by the appellants. According to Shri Khanna, this product contains the principal ingredients of cement. Shri Khanna submitted that it is difficult to accept the argument of Shri Sinha that simply because it does not go through the clinkering stage and does not contain any portland cement, it cannot be treated as cement. As per own admission of the appellants, it can be used for laying bricks and plastering over them. So long as it is fit for use for laying bricks and plastering the same, it is nothing but cement.

9. Central Excise Tariff covers cements, all varieties. Cement is described in various technical books and dictionaries. McGraw Hill Encyclopaedia of Science & Technology defines cement as any substance that acts as a binding agent. In Webster's Third New International dictionary, cement has been defined as a binding element or agency, any fabricated substance to make objects adhere to each other (as asphalt, gypsum, lime paster or plaster).

10. As per the report of the Chemical Examiner which has not been challenged by the appellants, it is an intimate mixture of blast furnace slag type material lime with some amount of gypsum and when it is mixed with water it shows plasticity and setting property which is not very hard as compared to ordinary portland cement. Considering the constitution and the uses, the product was regarded as a variety of cement. As per the case of the appellants themselves, this product is made from granulated blast furnace slag, fly ash mixed with lime and gypsum in certain proportions and then ground in ball mill. All these ingredients which are being used by the appellants in the manufacture of their product are also used in the manufacture of cement. Gypsum is one of the essential and common ingredient. No doubt, it is true that for the manufacture of portland cement as is commonly understood 'clmkering' stage' is a normal stage but there are several varieties of cement which have been mentioned in Encyclopaedia of Chemical Technology by Kirk-Othmer, Vol. 5 at page 187 where clinkering is not required. Calcium Aluminate Cements, Supersulfated Cement are non-portland cements and no clinking process is required for the manufacture of these varieties of cement. Merely because the product manufactured by the appellants does not go through clinkering stage, it cannot be said that this product cannot be a variety of cement. As per own admission of the appellants, this product is used for laying bricks and plastering the walls. Its non-use in R.C.C. work is not sufficient to take it out from the category of cement. The affidavit of Shri A.K.Aggarwal, Director Technical of Small Industries Research Training & Development Organisation, Mesra, Ranchi, which has been produced before us also does not help the appellants to show that this product cannot be said to be a variety of cement. As per his affidavit, this product is made from slag 60 to 80%, fly ash 5 to 8%, lime 15 to 30%, gypsum 2 to 4%. How this product cannot be treated as one of the varieties of cement has not been explained. The observation of Shri Aggarwal in this affidavit that cement as known and recognised in the trade and industry is always made by the process of clinkering (fusing of basic raw materials) cannot be accepted as correct. Clinkering is a process or stage in the manufacture of portland cement but it is not clear to us why it should be the deciding factor in order to determine if a cement has been manufactured. There is no authority for the statement that only cement that goes through the clinkering stage is classifiable as cement. In fact, clinkering is a

relatively recent technological practice. The earliest cements were made only with volcanic tuft mixed with lime. Many ancient structures built with such cements are still standing today. There are several varieties of cement besides portland cement. Encyclopaedia of Chemical Technology by Kirk-Othmer, Non-portland cements have also been mentioned and for the manufacture of the same no clinkering process is essential.

11. Under these circumstances, in view of the report of the Chemical Examiner and the fact that this product manufactured by the appellants contains those very ingredients which are also used in the manufacture of cement and that it is used for laying bricks and plastering them, it is a variety of cement, i.e., Non-portland cement as mentioned in Encyclopaedia of Chemical Technology by Kirk-Othmer.

12. The authority below has correctly classified this product under Tariff Item 23(2) of the Central Excise Tariff. We confirm the order of the authority below and reject this appeal.

13. Regarding penalty, though the original authority had imposed a penalty of Rs. 500 on the appellants but the Order-in-Appeal is silent on this point, meaning thereby he did not confirm this finding of the original authority. We also do not find any justification in imposing penalty in the circumstances of the present case.

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