

J.K. Cement Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-28-2002

Reported in : (2003)(87)ECC194

Judge : P Chacko

Appellant : J.K. Cement

Respondent : Cce

Judgement :

1. This appeal involves an amount of Rs. 36,300 and arises for admission. There is no representation for the appellants in spite of notice.

3. The issue involved in this case is whether the lubricants used in the limestone mines away from the appellants' cement factory, during January to March 2000 were capital goods eligible for modvat credit under Rule 57-Q as the rule stood at the material time. The lower appellate authority, in its order impugned in the present appeal, has relied on the Hon'ble Supreme Court's decision in Jay Pee Rewa Cements v. CCE, 2001 (77) ECC 457 (SC) : 2001 (133) ELT 3 (SC). The reliance is on para 22 of the Apex Court's judgment. The learned DR today reiterates this ground in defence of the impugned order.

In Jaypee Rewa Cements, there were two issues before the Apex Court.

The main issue was whether the explosives used by the cement manufacturer for mining limestone at the mines situated away from the cement factory, were eligible

inputs under Rule 57-A, for Modvat Credit. The other issue was whether certain capital goods used at the mines were eligible for Modvat credit under Rule 57-Q. The latter issue was examined in para 22 of the Apex Court's judgment and decided against the assessee. It is this part of the Apex Court's decision that has been relied upon by the lower appellate authority in the impugned order and by the learned DR today. Lubricants were recognized as capital goods w.e.f. 1.3.1997. The period of dispute in this case is January to March 2000. There is no dispute of the fact that lubricants were capital goods under Rule 57-Q during the said period. But that rule had further stipulated that the capital goods should have been used in the factory of production of final product. In the instant case, the lubricants were used in the off-factory mines. The Apex Court has taken note of like factual situation and denied Modvat credit on capital goods to like manufacturers for like period. The issue involved in this case stands squarely covered against the appellants by the decision of the Apex Court. The appeal is dismissed in limine.

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