

Cce Vs. Aditya Cement

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-18-2003

Reported in : (2003)(90)ECC552

Judge : A T V.K., P Chacko

Appellant : Cce

Respondent : Aditya Cement

Judgement :

1. The common issue involved in these four appeals filed by Revenue against common Order-in-Appeal No. 324 to 336/2002 passed by the Commissioner (Appeals), is whether the Modvat credit of the duty paid on the Capital goods used in the mines is available to the Respondents, M/s. Aditya Cement.

2. Ms. Charul Baranwal, learned SDR, submitted that M/s. Aditya Cement manufacture cement/clinker; that they availed of Modvat credit on the following capital goods: (a) Electric motor used in lime stone conveyor belt situated outside the factory.

3. She, further, submitted that as the capital goods have been used in mines which is outside the factory premises of the Respondents, the Credit of the duty is not admissible; that as per the judgment of the Supreme Court in the case of Jay Pee Rewa Cement v. CCE, 2001 (77) ECC 457 (SC): 2001 (133) ELT 3 (SC), the Credit on capital goods used in mines has been held to be inadmissible; that joists

had been used as building material and as such cannot be called machine, machinery or components/spares thereof. Reliance has been placed on the decision in the case of Malvika Steel Ltd. v. CCE, 4. On the other hand, Shri B.L. Narasimhan, learned Advocate, submitted, that the mines of the factory is adjacent to the factory and is actually the part of the factory area: that without the impugned goods manufacture of final products cannot be undertaken and as such these are eligible .capital goods for availing the Credit.

5. We have considered the submissions of both the sides. At the relevant time, Rule 57Q of the Central Excise Rules, 1944 provided for taking the Modvat Credit of the duty paid on the capital goods used by the manufacturer in his factory. Thus it is essential that the capital goods, in respect of which Modvat Credit is to be availed of, are used within the factory of the manufacturer. This issue has been finally settled by the judgment of the Supreme Court in the case of Jay Pee Rewa Cement. The Apex Court has held in the said judgment that "In view of the provisions of Rule 57Q, the appellant is not entitled to any relief." Thus following the judgment of the Supreme Court, the Respondents are not eligible to avail of credit of duty paid on capital goods which were used in mines and not in factory. As far as joists is concerned, the learned SDR has submitted that it is structural material and neither machine/machinery nor spare/components/accessory of machine/machinery, etc. Accordingly we allow all the four appeals filed by Revenue.

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