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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-05-2003

Reported in : (2004)(92)ECC145

Judge : V Agrawal

Appellant : Manglam Cement Ltd.

Respondent : Cce

Judgement :

1. The issue involved in this Appeal filed by M/s. Manglam Cement Ltd. is whether CENVAT Credit of the duty paid on the inputs used outside the factory premises is available to them.

2. Shri Pankaj Mullick, learned Chartered Accountant, submitted that the Appellants manufacture clinker and cement and avail CENVAT Credit in respect of duty paid on inputs; that the Revenue has disallowed the CENVAT Credit in respect of explosive used by them in their mines on the ground that these inputs were not used within the factory of production. The learned Advocate, further, submitted that the Supreme Court in the case of Jaypee Rewa Cement vs. Commissioner, 2002-Taxindiaonline-97-SC-CX, has held that explosives which are used outside the factory by cement manufactures for excavation of limestone are eligible for duty credit an inputs; that therefore, inputs used by them in their mines are eligible for CENVAT Credit; that the definition of inputs in Rule 2 (f) of CENVAT Credit rules, 2001 does not prevent the use of inputs outside the factory;

that the expression "within the factory of production" occurring at the end of the said Rules does not relate to the inputs but relates to all the materials mentioned in the later portion of the definition of inputs such as lubricating oil, greased, coolants etc; that this view has been upheld by the Appellant Tribunal in the case of CCE, Jaipur, Vs. Birla Corporation Ltd. 2002 (146) ELT 215 (Tri) and CCE Jaipur Vs. J.K. Udaipur Udyog Ltd. 2002 (147) ELT 877.

3.1 Countering the arguments Shri S.C. Pushkarna, learned Departmental Representative, submitted that the Supreme Court's decision in Jaypee Rewa Cement Case was delivered with reference to earlier Rule 57 A of the Central Excise Rules, 1944, wherein the Rule was silent about the use of inputs within the factory of production; that the present dispute relates to the period from July, 2001 to June, 2002 when CENVAT Credit Rules, 2001 were operational; that the definition of inputs contained in Rule 2(f) of the CENVAT Credit Rules reads as under : "Inputs" means all goods, except high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products or not, and includes Lubricating oils, greased, cutting oils and coolants and accessories of the final products cleared along with the final product, goods used as paint, or as packing material or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production." 3.2 He mentioned that a perusal of the definition of the inputs clearly reveals that the inputs are required to be used within the factory of production; that this has also been clarified by the Board vide Circular No. 12/02-CX. 8 dated 8.5.02.

4. I have considered the submissions of both the sides. The definition of the inputs as given in CENVAT Credit Rules clearly provides that inputs are required to be used for manufacture of final products or for any purpose within the factory of production. As per the definition of the 'inputs', goods will qualify as inputs if the following conditions are specified: (i) Goods are used in or in relation to the manufacture of final products, directly or indirectly and whether contained in the final products or not; (ii) Goods does not include high speed diesel oil and motor spirit commonly used as petrol; (iii) Goods however, includes lubricating oil, greases, cutting oils and coolants and accessories of the final products, cleared

along with the final products, goods used as paint or as packing material or as fuel or for generation of electricity or steam.

(iv) The goods are used for manufacture of final products or for any other purpose within the factory of production.

The contention of the learned Advocate, that the requirement used for manufacture......within the factory of production applies only to lubricant oil greases etc. is not supported by the definition of inputs as given in CENVAT Credit Rules. There is no reason to come to the conclusion that expression 'within the factory of production' does not apply to the first part of the definition, merely because the first part of the definition is not different from definition of term 'inputs' given in the erstwhile Rule 57A and 57B. Under the CENVAT Credit rules there is one comprehensive definition of term 'inputs and it has to read. Completely and not in part. A perusal of the definition clearly indicates that inputs are required to be used within the factory of production. The judgment in the case of Jaypee Rewe Cement Vs. CCE, is not applicable as the Rule which was interpreted by the Supreme Court was Rule 57 A of Central Excise Rules and reading of the said rule clearly showed that the inputs were to be used in or in relation to the manufacture of the final products. Supreme Court observed that Rule 57 A (1) "does not, in any way, specify that inputs have to be utilised within the factory premises." With the change in the definition of inputs wherein specific phrases 'within the factory of production' has been used, which makes it necessary that the inputs are used within the factory of production the judgment in Jay Pee Rewa is not applicable. Accordingly, the Appeal is rejected as far as disallowance of the MODVAT Credit is concerned. Appeal is rejected as far as disallowance of the MODVAT Credit is concerned. The penalty is, however, set aside as the issue involved is of interpretation of Rule.