Commissioner of Customs and Vs. Vikram Super Cement and ors.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-09-2003

Reported in : (2003)(91)ECC460

Judge : A T V.K., P Chacko

Appellant : Commissioner of Customs and

Respondent : Vikram Super Cement and ors.

Judgement :

1. In these six appeals, filed by the Revenue, the issue involved is whether the Modvat Credit of the duty paid on capital goods used in mines away from the factory is available to M/s. Vikram Super Cement, under erstwhile Rule 57Q of the Central Excise Rules, 1944.

2. We heard Shri Virag Gupta, learned DR for Revenue and Shri B.L.

Narasimhan, learned Advocate for the respondents. M/s. Vikram Super Cement manufacture cement and have availed the Modvat Credit of the duty paid on various capital goods which were used by them in their mines, situated about 4 to 5 kms away from their factory. The learned DR submitted that it has been held by the Supreme Court in the case of Jaypee Rewa Cement v. CCE, M.P., 2001 (77) ECC 457(SC) : 2001 (133) ELT 3 (SC) that the capital goods are required to be used in the factory for the purpose of availing Modvat Credit; that the Larger Bench of the Appellate Tribunal in the case of Madras Cements Ltd. v. CCE, Hyderabad, 2003 (56) RLT 978 (CEGAT-LB) has held, following the judgment in Jaypee Rewa Cement, that capital goods, used in mines situated outside the factory, are not eligible capital goods. He, therefore, contended that the Modvat Credit is not available to the respondents as capital goods have not been used in their factory.

3. Shri B.L. Narasimhan, learned Advocate, submitted that the capital goods, involved in these appeals, are parts of Lime Stone Crusher, Dumpers and Conveyor Belts; that the conveyor belts are used exclusively in plant only; that show cause notice has wrongly been issued to them on the presumption that conveyor belts are used in mines; that stores issue passes reveal the fact; that, moreover, in the case of J.K. Udaipur Udyog Ltd. v. CCE, Jaipur-II, 2002 (147) ELT 996 (T), the Appellate Tribunal has even allowed the Modvat Credit on ropeways which are partly inside the factory and partly outside the factory for the purpose of transferring the crushed lime stone from the mines located at 5.8 kms. from the factory on the ground that the extension outside the factory is a part of ropeway inside the factory; that the appeal, filed by the Commissioner against the said decision, has been dismissed by the Supreme Court in Civil Appeal No. 1129 of 2003 vide order dated 10.7.2003 as the Department did not press the appeal. The learned Advocate, further, submitted that mine is located adjacent to the factory and as such is an extension of the factory area; that mine is not located at 4-5 kms. from the factory; that the lease of mining limestone is granted by the State Government only when the applicant undertakes to establish a cement factory for utilising the limestone in the manufacture of cement; that thus the allotment of land for mining and establishment of a cement factory are parts of an integrated scheme of the industrial policy of the Government; that, thus, the mere physical separation of the mines from the factory area would not break the nexus between the mines and factory. He also contended that dumpers are used for carrying limestone to crusher and as such is eligible capital goods and the Commissioner (Appeals) has allowed the Modvat Credit, relying upon the decision in Malabar Cement Ltd. v. CCE, Cochin, 4. We have considered the submissions of both the sides. The Larger Bench of the Appellate Tribunal in Madras Cement Ltd. v. CCE, 2003 (56) RLT 978 has held that the Modvat Credit is not available in respect of the duty paid on capital goods used in mines situated outside the

factory. The Larger Bench has followed the judgment of the Supreme Court in Jaypee Rewa Cement case wherein the Hon'ble Supreme Court held as under; "......In view of the provisions of Rule 57Q, the appellant is not entitled to any relief. The appeal is dismissed." The Larger Bench observed that "in the case of M/s. J.K. Udaipur Udyog Ltd., the benefit of Modvat Credit on capital goods, used in the mining area, was denied by the Tribunal after relying upon the decision of the Larger Bench in the case of Vikas Industrial Gas v. CCE, Allahabad, 2000 (38) RLT 415, M/s. J.K. Udaipur Udyog Ltd. filed appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court disposed of the appeal alongwith various other appeals in the case of Jaypee Rewa Cement v. CCE, M.P.5. In view of these decisions, there is no substance in the contention of the respondents that mining area is an integral part of the factory.

Accordingly, capital goods, which are being used in mines, outside the factory, are not eligible capital goods for the purpose of Modvat Credit. However, in respect of the conveyor belts, Modvat Credit is available to the respondents as the Revenue has not rebutted their contention that the same is used exclusively in plant only. We, therefore, reject the appeal of the Revenue with regard to conveyor belt. We do not find any substance in respondents' plea about dumper being used to transport crushed limestone from mining area and it is not used in their factory. Thus, the respondents are not eligible to avail Modvat Credit of duty paid by them in respect of capital goods, subject-matter of these appeals, except the conveyor belts. We also agree with the learned Advocate for the respondents that no penalty is imposable in these matters involving interpretation of term "capital goods".