

Cce Vs. Grasim Cement

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-20-2003

Reported in : (2004)(91)ECC543

Judge : P Chacko

Appellant : Cce

Respondent : Grasim Cement

Judgement :

1. The original authority disallowed CENVAT credit amounting to Rs. 1,76,909 to the respondents in respect of welding electrodes which were used for repairs and maintenance of their plant and machinery. That authority also imposed a penalty of Rs. 10,000 on the party. The appeal preferred by the assessee against the decision of the original authority was allowed by the Commissioner (Appeals). Hence the present appeal of the Revenue.
2. Ld. DR reiterates the grounds of this appeal and relies on the Tribunal's Larger Bench decision in Jaypee Rewa Plant v. CCE, Raipur, 2003 (88) ECC 503 (Tribunal-LB): 2003 (57) ELT 739 (T-LB)].
3. Ld. Counsel for the respondents fairly concedes that the "cenvatability" of welding electrodes as inputs has been settled by Larger Bench in Jaypee Rewa Plant (supra) in favour of the Revenue. Ld.

Counsel, however, submits that, as this Tribunal had earlier taken the view that welding electrodes used for repairs and maintenance of plant and machinery were eligible inputs for Modvat credit and it was only with the Larger Bench decision in Jaypee Rewa Plant (supra) that the view changed in favour of the department, it cannot be said that the availment of CENVAT credit on welding electrodes by the respondents during the relevant period was with any mala fide intention. The whole thing was a matter of interpretation of the relevant rules. Ld.

Counsel, therefore, pleads for vacating the penalty. I think a valid point has been made by the counsel. The CENVAT credit in question was taken at a time when various benches of this Tribunal had held that welding electrodes used for repairs and maintenance of capital goods were eligible inputs for modvat credit purposes. Hence no mens rea can be attributed to the respondents. Accordingly, the penalty imposed on them is set aside.

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