Gujarat Ambuja Cement Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-04-2003

Reported in : (2004)(91)ECC131

Judge : S Kang, M T K.D.

Appellant : Gujarat Ambuja Cement Ltd.

Respondent : Cce

Judgement :

1. The appellants are aggrieved by the demand of duty of Rs. 12,85,644.70 confirmed against them by the Commissioner and also against the penalty of equivalent amount and interest in respect of iron and steel scrap.

2. The allegation is that they have removed iron and steel scrap in contravention of rule 9(2) of the Central Excise Rules, 1944 read with Section 11A(1) of the Act. Show cause notice also seeks to recover duty from the appellants on furnace oil and used refractory bricks. But the demand on these was dropped. The present proceeding relates to the demand of duty on iron and steel scrap.

3. The appellants are manufacturer of cement and steel scrap has arisen, not while manufacturing the cement but the said iron and steel scrap arose while using the duty paid iron and steel material for construction work in their factory. It has been pleaded that no credit under the Modvat Scheme was taken in respect of the duty paid on iron and steel material brought into the factory for construction work.

Show cause notice alleged that the said clearances ought to have been effected on payment of duty in terms of rule 57-F(18) (a) and rule 57S(2) (c) of the Rules.

5. The impugned order does not bring any evidence on record to counter the submission made by the appellants that they have not taken any modvat credit in respect of the steel material brought in their factory. The question of recovering duty on the inputs (steel material), which gets converted into waste and scrap can arise, only in the event the appellants were claiming modvat on the said material either as input or as capital goods. It is nowhere forthcoming either in the impugned order or in the show cause notice that the appellants had claimed credit of duty paid on steel material. It is obvious that, cement being their final product, the steel material cannot be an input. If at all, any credit was to be obtained, then the same could have been possibly claimed under the category of "capital goods" provided the manufacturer establishes the eligibility of such a claim before the Competent Authority. It has not come on record that the manufacturer has claimed duty paid on steel structures for obtaining credit under the "capital goods" category. On the contrary, it has been admitted in the order that, the scrap of iron and steel was generated during the process of construction of the plant. The question of collection of any duty ont he waste and scrap can arise only in the case where credit was taken on the material. There is no finding on this aspect of the matter in the impugned order to hold that the credit on the steel material was indeed taken, at the point of receipt of the material in the factory. In the impugned order, no finding i s recorded as to from which modvat records, the Department has obtained the information to hold that modvat credit was claimed on the steel material.

6. We, therefore, hold that the credit of duty paid on the steel material, having not been taken,the scrap which is generated in the process of construction work, is not liable to any excise duty, as held in the impugned order. Therefore, we hold that the impugned order is not sustainable and the same deserves to be set aside.

7. The appeal is accordingly allowed and the impugned order is set aside, with consequential relief in accordance with law.