Ambuja Cement Rajasthan Ltd. and Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-28-2003

Reported in : (2004)(91)ECC484

Judge : Author: P Chacko

Appellant : Ambuja Cement Rajasthan Ltd. and

Respondent : Cce

Judgement :

1. These appeals are against the orders passed by the Commissioner (Appeals) denying to the appellants Modvat credit on explosives used at off factory mines for producing limestone. The relevant periods, in respect of which the credits have been denied to the appellants are Sept. 2001 to Jan. 2002, April to Nov. 2000 and July to November 2001 respectively in Appeals No. 871, 896 and 2075.

2. Examined the records and heard both the sides. Arguing for the appellants in Appeal No. 896/2003, the learned Counsel submits that the issue involved in the case is squarely covered by the decision of this Bench in the cases of Commissioner v. J.K. Udaipur Udyog Ltd., 2002 (147) ELT 877 and Commr. v. Birla Corporation Ltd., 2002 (146) ELT 215, This submission is not contested. In the cited cases, one of the issues considered by this Bench was whether the explosives used by the respondents for mining limestone at sites outside their cement factory were eligible inputs for Modvat purpose. In each of the two cases, the relevant period was April to September 2000 i.e. prior to the date (1.7.2001) on

which the Cenvat Credit Rules, 2001 came into force and it was held that the explosives used as above were eligible inputs for Modvat credit under Rule 57-AA of the Central Excise Rules, 1944. In the instant Appeal No. E/896/2003 wherein the period of dispute is April to Nov. 2000, the issue stands squarely covered in favour of the appellants. Accordingly, the said appeal is allowed.

3. In each of the remaining two appeals, the period of dispute is from 1.7.2001 or from a subsequent date and the relevant Rule governing input duty credit is Rule 3 of the Cenvat Credit Rules, 2001. The ground on which the credits taken by the appellants in these appeals on explosives under the said Rule was disallowed by the lower appellate authority is that the said goods does not fit in the definition of "input" under Clause (f) of Rule 2 of the Cenvat Credit Rules, 2001.

This definition reads as under: "input 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 whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared alongwith 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.

The learned Counsel submits that the above definition was brought into force in substitution of the definition of "inputs" under Clause (d) of Rule 57-AA of the Central Excise Rules, 1944. The erstwhile definition referred to by the Counsel 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 whether directly or indirectly and whether contained in the final product or not and includes accessories of the final products cleared alongwith the final products, 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, and also includes lubricating oils, greases, cutting oils and coolants." The learned Counsel submits that the two definitions are pari materia and, therefore, the decisions rendered by this Tribunal in the cases of JK Udaipur Udyog Ltd. and Birla Corporation Ltd. with reference to Rule 57-AA(d) are equally applicable to the present cases involving Rule 3 of the Cenvat Credit Rules, 2001.

4. The DR submits that any decision in these cases should be in terms of paragraphs 12 and 13 of the Supreme Court's judgment in Jaypee Rewa Cement case 2001 (77) ECC 457 (SC) : 2001 (133) ELT 3 (SO. Quoting from the said paragraphs, the learned DR submits that the Apex Court had allowed input duty credit on explosives under Rule 57-A read with Rule 57-J of the Central Excise Rules, 1944. According to the DR, there is no rule corresponding to Rule 57-J in the Cenvat Credit Rules, 2001.

This submission is contested by the Counsel who refers to the text of Rule 3 of Cenvat Credit Rules, 2001 and submits that the situation contemplated under the erstwhile Rule 57-J has been adequately covered by Rule 3 of the Cenvat Credit Rules, 2001.

5. I have carefully considered the submissions. On a reading of the cited definitions of 'input', I have to agree with the Counsel's submission that the definition under Rule 2(f) of the Cenvat Credit Rules, 2001 is pari materia to that under the erstwhile Rule 57-AA(d) of the Central Excise Rules, 1944. There is no amendment of the pith and substance of the definition. There is only a textual re-structuring. Moreover, it is found that, in these cases, the appellants have relied on the first half of the definition which reads: "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 whether directly or indirectly and whether contained in the final product or not." This part of the definition has not been even restructured. The decision of this Bench in the cited cases of JK Udaipur Udyog and Birla Corpn. should, therefore, apply to the instant cases as well.

Accordingly, these two appeals are also allowed.

6. If any deposit made by any of these appellants under Section 35-F of the Central Excise Act is lying with the Department, the same shall be refunded to them as early as possible, at any rate within a period of 30 days from the date of

receipt of a certified copy of this order.