

Commissioner of Central Excise Vs. Narmada Cement Co. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-08-2003

Judge : S T Gowri

Appellant : Commissioner of Central Excise

Respondent : Narmada Cement Co. Ltd.

Judgement :

1. Notice issued to the assessee proposed to deny modvat credit of the duty paid on the cement clinker that it received on the ground that the quantity that it received was less than the quantity shown to have been sent to it by the invoice issued by the supplier of the clinker. The Assistant Commissioner confirmed the proposal in the notice, denying the credit. The assessee appealed the order. The Commissioner (Appeals), relying upon the decision of the Tribunal in U.P. State Cement Corporation Ltd v. CCE 1998 (74) ECR 361 held that since the losses in transit of the clinker was due to natural causes, credit should not be denied. This appeal by the department questions this finding.

2. I have heard the departmental representative. Mr. R. Viswanathan, who claimed to represent the appellant, stated, in reply to a question by me, that he was not an employee of the respondent. He also stated that he was not qualified otherwise as an authorised representative. He was therefore not heard.

3. The rule relating to modvat provided that credit is to be taken of the duty paid on inputs which are used in the manufacture of the final product, the quantification of

the duty that is actually paid, or, in appropriate cases, where orders have been issued by the competent authority under the rules to this effect "deemed to have been paid" would directly depend upon the quantity of the inputs that are received. Whether the duty is ad valorem or specific, the credit that is relatable specifically to the quantity received. If, therefore, where the quantity received is shown seem to be less than the duty that was paid on the quantity that was despatched, the entire duty paid on the goods despatched would not be available as credit. It is only the duty payable on the actual quantity that was received that would be available for credit. The decision of the single member in U.P. State Cement Corporation Ltd v. CCE 1998 (74) ECR 361 that the Commissioner (Appeals) relied upon has no relevance to the facts before me. It said that loss of clinker in transit between its place of production and its place of utilisation would be caused by natural causes mentioned in Rule 196. The decision has no relevance at all and it was misplaced to that extent, therefore, the appeal would succeed.

4. However, the Commissioner (Appeals) has not rested his order solely on the basis of this decision. He has also noted that the duty was paid on the clinker Jafrabad where it is produced on the basis of the draft survey of the vessel on which it was loaded for carriage to the respondent's factory and that there was no chance of loss during the transit because "the vessel is mechanically closed after loading of clinker." He has therefore found that it was possible that the loss was due to inaccuracy as a result of the draft survey at Jeprabad. He has cited an order of the Commissioner of Central Excise, Surat dropping the proceedings issued to it for shortages when Chapter X procedure was followed. If that is so, the matter requires further examination to determine whether the duty was paid on notional basis without ascertaining the actual quantity and also has to be seen, how the quantity was ascertained when the goods arrived at the respondent's premises and whether it was on an actual basis or again on the basis of draft survey. For this purpose, the matter is remanded to the adjudicating authority.