

Neer Shree Cement Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-12-2004

Reported in : (2004)(93)ECC389

Judge : P Bajaj

Appellant : Neer Shree Cement

Respondent : Cce

Judgement :

1. In this appeal which has been filed by the appellants against the impugned Order-in-Appeal, the issue relates to the denial of Cenvat credit to the appellants on the packing materials, namely, PP Woven Sacks/Bags under Rule 57AB of the Rules.

2. The learned counsel has contended that for want of space in the factory premises of the appellants, the packing material was kept in the adjoining premises of M/s. Manglam Cement Ltd. and the quantity of the packing material allegedly found short in their factory tallied with the quantity found in the premises of M/s. Manglam Cement Ltd. and that the appellants' factory is also owned by M/s. Manglam Cement Ltd. Therefore, the Cenvat credit could not be denied as there was no intention on the part of the appellants to remove the same in a clandestine manner.

3. On the other hand, the learned SDR has contended that since there was a removal of the packing materials on which Cenvat credit had been taken by the appellants, the Cenvat credit had been rightly denied to them.

4. I have heard both sides and gone through the record. On facts, there is not much dispute. The appellants, M/s. Neer Shree Cement is owned by M/s. Manglam Cement Ltd. At the time of checking of the stock, shortage of the packing material, detailed above, involving Cenvat credit of the amount in question, was found, but from the very beginning they had taken the plea that the quantity found short had been kept by them in the premises of M/s. Manglam Cement Ltd. for want of space with them.

Even the Department knew about this position as is evident from the findings recorded by the Commissioner (Appeals) in para 5 of the impugned order. Therefore, it could not be concluded that there was any clandestine removal of the packing materials on which the appellants had taken the modvat credit. The quantity of the packing material found short with the appellants tallied with the quantity which was found lying in the premises of M/s. Manglam Cement Ltd. Moreover, M/s.

Manglam Cement Ltd. had not claimed that the packing material found lying in their premises, they had also not claimed any credit thereon.

Therefore, keeping in view the facts and circumstances of the case, the Cenvat credit could not be denied to them. In an identical case of Laxmi Manufacturers P. Ltd. v. CCE, Chandigarh, 1999 (114) ELT 877, this very view has been taken. In that case also the charge of clandestine removal was attributed to the manufacturer on the ground of removal of goods from the factory, but it revealed that the goods were removed by the manufacturer to the godown because of shortage of space in the factory and the quantity found short in the factory, tallied with the quantity found in the godown. It was observed that the charge of clandestine removal was not proved. The ratio of the law laid down in this case squarely covers the case of the appellants.

5. In view of the discussion made above, the impugned order of the Commissioner (Appeals) is set aside in toto. The appellants are entitled to the Cenvat credit on the packing material in question. The appeal of the appellants is allowed with consequential relief, if any, permissible under the law.

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