

Century Cement Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-06-2004

Judge : P Chacko

Appellant : Century Cement

Respondent : Cce

Judgement :

1. The appellants are cement manufactures. They use explosives in their off-factory mines for mining of limestone which is required for the manufacture of cement. They took input duty credit on such explosives over a period viz. april 2000 to Feb., 2002. The original authority disallowed the entire credit by relying on the Supreme Court's decision in Jaypee Rewa Cement Vs. Commissioner of Central Excise, 2002-TAXINDIAONLINE-97-SC-CX, wherein it had been held that explosives used by cement manufacturers in their off-factory mines were eligible capital goods for the purpose of Rule 57Q of the erstwhile Central Excise Rules, 1944. In the appeal preferred by the assessee against the decision of the original authority, Id. Commissioner (Appeal) allowed the credit on explosive for the period upto 30.06.2001 and disallowed the credit taken on the item for the subsequent period (July, 2001 to Feb., 2002). The present appeal of the assessee is against the denial of credit for the latter period.

3. Ld. Counsel for the appellants submits that, for the period April, 2000 to June 2001, Id. Commissioner (Appeals) has allowed input duty credit on explosives by following the ratio of the decisions rendered by this Bench in Commissioner Vs.

J.K. Udaipur Udyog Ltd, 2002-TAXINDIAONLINE-85-CESTAT-DEL, and Commissioner Vs. Birla Corporation Ltd, 2002-TAXINDIAONLINE-62-CESTAT-DEL. Id. Counsel argues that the ratio of the said decisions, rightly applied by the lower appellate authority to the Modvat credit for the period up to June 2001, is equally applicable for the subsequent period. Elaborating this point, counsel refers to the relevant rules, The Rule which defined the expression 'input' for the period April, 2000 to June 2001 is Rule 57AA (d) of the Central Excise Rules, 1944. The corresponding provision for the subsequent period is Rule 2 (f) of the CENVAT Credit Rules, 2001.

The provisions referred to by the Counsel read as under : - (d) 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 accessories of the final products cleared along with 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 or production, and also includes lubricating oils, greases, cutting oils and coolants." (f) 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 and coolants, accessories of the final products cleared along with 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 purpose, within the factory or production." Counsel submits that there is no substantial difference between the two provisions. Only wordings have been recast without altering the legal content. It is argued that the requirement of "used within the factory of production" is applicable only to the second half of the definition and not to the first half. Explosives are covered by the first half of each of the above definitions and, therefore, input duty credit is admissible to explosives, whether or not used within the factory of production of final product. In other words, the argument is that the ratio of the Tribunal's decisions in Birla Corporation (supra) and J.K.Udaipur Udyog (supra) is equally applicable to the instant case. On the other hand, Id. DR submits that, as

clarified by the Board in its Circular No. 637/28/2002-CX dated 8.5.2002, only those goods which were used in the manufacture of the final product within the factory of production of final product would qualify as inputs for Modvat credit under Rule 2 (f) of the CENVAT Credit Rules, 2001. He submits that the Circular was issued after considering the ratio of the Supreme Court's judgment in Jaypee Rewa Cement (supra). The Board's circular is binding on the department as per rulings of the apex Court, argues the DR. Ld.

DR has also cited the Tribunal's decision in India Cements Ltd. Vs. CCE [2002 (50) RLT 954], wherein Modvat credit under Rule 57Q was disallowed to the assessee in respect of certain capital goods used in off-factory mines. In his rejoinder, with reference to the Board's Circular, Id. Counsel submits that the West Zonal Bench of the Tribunal has allowed input duty credit in respect of explosives used by the assessee outside their factory, during the period July to December, 2001, by applying the ratio of the Supreme Court's decision in Jaypee Rewa Cement (supra) vide Order No. C-IV/911-913/WZB/2003 dated 29.10.2003 in the case of Manikgarh Cement and Others Vs. Commissioner (Appeals) Nos. E/1203/2003 etc.). It is pointed out that, in the cited case, the Tribunal has set aside orders which were passed by the Commissioner (Appeals) by relying on the above Board's Circular.

6. I have carefully examined the submissions. There is no dispute of the duty-paid nature of the goods or of utilisation thereof in relation to the manufacture of cement. Undisputedly, the explosive are used in the appellants' limestone mines, away from their cement factory. The lower appellate authority has held that, as the goods were not used within the factory of production of cement, it would not come within the definition of "input" under Rule 2(f) of the CENVAT Credit Rules, 2001. This rule squarely compares with Clause (d) of Rule 57AA of the erstwhile Central Excise Rules, 1944. Both the clauses have already been reproduced in this order. Barring structural variations of language, there is hardly any difference between the provisions. Each of these clauses has two parts, the first part dealing with "goods (except High Speed Diesel Oil and Motor Spirit) used in or in relation to the manufacture of final products, whether directly or indirectly and whether contained in the final products or not, and the second part covering another category of

goods. The expression "within the factory of production" figures in the latter part of each clause. This expression is conspicuously absent in the former part of each clause.

Admittedly, explosives belong to the former part of each clause.

Admittedly, explosives belong to the former part and, in that case, there is no requirement of explosives being used within the factory of production of cement so as to be eligible for input duty credit under Rule 2 (f) *ibid*. I note that the Board's Circular was issued before this Bench decided the cases of J.K. Udaipur Udyog (*supra*) and Birla Corporation (*supra*). In the instant case, the department has not claimed that the ratio of the said decisions of the Tribunal is inoperative, nor has it been shown, *dehors* Board's Circular, that the ratio of the apex Court's judgment in Jaypee Rewa Cement (*supra*) is not applicable to the instant case.

7. Following the case law cited by the Counsel, I hold that the Modvat credit in question is admissible to the appellants.

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