J.K. Cement Works Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-15-2004

Reported in : (2004)(117)LC560Tri(Delhi)

Judge : A T V.K., P Bajaj

Appellant : J.K. Cement Works

Respondent : Cce

Judgement :

1. Hon'ble Single Member vide Misc. Order No. M/44/04-NB dated 10.2.2004 has requested the Hon'ble President to constitute a Larger Bench to resolve the issue as to whether the CENVAT Credit of the duty paid in respect of explosives used outside the factory of production is available to the Appellants M/s. JK Cement Works. The Hon'ble President has directed the matter to be posted before the Division Bench.

Accordingly, we heard Shri K.K. Anand, learned Advocate for the appellants and Shri Virag Gupta, Learned Departmental Representative for the Revenue.

2. Learned Advocate submitted that the Appellants manufacture cement and avail of CENVAT Credit of the duty paid on inputs. He fairly conceded that issue has now been decided finally by the Supreme Court in the case of CCE Jaipur v. JK Udaipur Udyog Ltd. wherein it has been held that the expression 'used for manufacture of final products or for any other purpose within the factory of

production' in the definition of the 'inputs' is important and it clearly indicates that in order to satisfy the requirement of definition of 'inputs' as given in the Rules, the article or goods must be used within the factory of production and if the article is not used within the factory of production, it will not be 'input' within the meaning of Sub-Rule (d) of Rule 57AA of he Central Excise Rules and CENVAT Credit will not be permissible. Learned Advocate, further, mentioned that the mines of the appellant is just adjacent to the factory of production and as such in view of the definition of term 'factory' as given in Section 2(e) of the Central Excise Act, the mine should be treated as factory itself and therefore they will be eligible for CENVAT Credit. On query from the Bench, the learned Advocate could not clarify as to how close the mines are adjacent to the factory.

3. As admittedly the explosives are used in the mines which are outside the factory of production, the Appellants are not eligible to avail of the CENVAT Credit of the duty paid on explosives in view of the judgment of the Supreme Court in the case of JK Udaipur Udyog Ltd. (supra). We, therefore hold that the view taken by the Tribunal in the case of Manglam Cement Ltd. v. CCE vide Final Order No.A/1401/03-NB(SM) dated 5.8.2003 is the correct one. We therefore, answer the reference in favour of the Revenue. As no other issue is involved in the present Appeal, we uphold the impugned order and reject the Appeal itself.