Jaypee Bela Plant Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-14-2004

Reported in : (2005)(180)ELT31TriDel

Judge : M T K.C.

Appellant : Jaypee Bela Plant

Respondent : Cce

Judgement :

1. The issue involved in this appeal is whether the Cenvat Credit is allowable on pipeline which is used for carrying water from reservoir to the factory for use in the manufacture of the finished products. The period of dispute is 1996-97.

2. Shri B.L. Narasimhan, learned Advocate, appearing for the appellants pleaded that the appellant are bringing water from reservoir situated at 5/6 K.M. away from the factory through these pipe and tubes which are not in dispute. He pleaded that in the case of CCE, Chennai v.Pepsico India Holding Ltd. - 2001 (130) ELT 193 Chennai Bench of the Tribunal has held that modvat credit on PVC pipes used outside the factory for the purpose of drawing water from the well situated 200m from factory is only an extension of pipelines inside the factory to be used with the factory premises and hence credit is admissible under rule 57Q of the Central Excise Rules. He pleads that this principle was followed in the case of J.K. Udaipur Udyog Ltd. v. CCE, Jaipur-II 2002 (147) ELT 996 wherein it was held that ropeway used outside the factory for the purpose of transferring the crushed

limestone from the mines located 5.8 kms. from the factory being a part of ropeway inside the factory is capital good sand modvat credit is admissible. He also pleaded that the appeal filed by the Revenue against the order of the Tribunal in the case of J.K. Udaipur Udyog Ltd. v. CCE, Jaipur-II (supra) was withdrawn by the Revenue and it was disposed of by the Supreme Court as the appeal not pressed vide order dated 10.7.2003 In Civil Appeal No. 1129 of 2003. In view of this, the pipes and tubes which are being sued by the appellants in the present case for transferring water from reservoir to the factory are eligible for modvat credit as one end of the pipe line is within the factory where water is being utilized.

3. Shri P.M. Rao, learned JDR appearing for the Revenue stated that in this case the water is being drawn from pits which have been created in the mines due to excavation of raw material and during rainy season the pits are filled with rainy water as well as spring water and the same is being transferred through pipeline to the factory .He said that in the present case the distance of source of water from the factory is 5/6 kms and major portion of the pipeline is outside the factory.

Therefore, credit should not be allowed to the appellants. He relied on the decision of the Tribunal in the case of Raj Cement v. CCE, Jaipur - 2003 (150) ELT 510 wherein it was held that area of mining of limestone even through connected by strip of land having conveyor for transporting limestone of factory cannot be treated as covered under definition of factory and conveyor used in limestone mines and components for belt conveyor and rubber belt used to carry limestone from mines to factory are not entitled to credit where the mines are situated outside the factory area. He also referred to the decision of the Supreme Court in the case of CCE, Jaipur v. J.K. Udaipur Udyog Ltd. 2004 (171) ELT 289.

4. I have carefully considered the submissions made by both the sides and I find that the present case is fully covered by the decision of the Tribunal in the case of J.K. Udaipur Udyog Ltd. v. CCE, Jaipur-II (supra) and in the case of CCE, Chennai v. Pepsico India Holdings Ltd. (supra). It is immaterial whether distance is 200m or 5 km when one end of the pipeline is within the factory and the same is being utilized for bringing water from reservoir to the factory for the manufacture of finished goods within the factory. In view of this, the appellants are entitled for the

modvat credit on the pipes and tubes used for drawing water from the reservoir to the factory. Accordingly the appeal is allowed.