

The Associated Cement Companies Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-05-2005

Judge : M T K.C.

Appellant : The Associated Cement Companies

Respondent : C.C.E.

Judgement :

1. The appellants were denied modvat credit on dust collector filter bags and other items viz. CL-361, H 450, H 130 falling under sub-hearing 2942.00. The appellants are not contesting the disallowance of credit on these other items which are in the nature of chemicals falling under sub-hearing 2942.00 They are only contesting the disallowance of modvat credit on dust collector filter bags which has been taken by the lower authorities as parts of the pollution control equipment.

2. Shri S.K. Bansal, learned C.A. pleads that pollution control equipment in a cement factory is part and parcel of the cement plant as without air pollution control equipment, a cement plant is not complete.

The cement plant is notified under rule 57Q of the Central Rules and, therefore, credit cannot be denied on the dust collector filter bags which are parts of the cement plant. He relied on the following decisions of the tribunal : where it was held that "the learned Counsel, explaining the function of these items, submits that these bags are used for collecting dust for prevention of air pollution. We note that the Apex Court in the case of IFFCO Vs. Collector, Ahmedabad reported in 1996

(86) ELT 177 held that pollution control apparatus/devices used in a plant are to be treated as part and parcel of the manufacturing process for production of the end product. Having regard to this ruling of the Apex Court, we hold that Dust Collecting Bags/Filter Bags are part and parcel of the manufacturing process of cement and, therefore, are eligible to the benefit of Modvat credit as capital goods under rule 57Q." 2. CCE, Raipur Vs. Monnet Ispat Ltd. 2002 (147) ELT 161 wherein the decision in the case of Century Cements Ltd. Vs. CCE, Raipur, was followed.

3. M/s. ACC Ltd. Vs. CCE, Bhopal, Final Order No. A/735/04-NB(SM) dated 20.4.2004.

3. Shri S. Bhatnagar, Learned JDR pleads that credit is allowable on pollution control equipment but not on parts of pollution control equipment. Under rule 57Q of the Rules, the credit on components, spares and accessories is allowable only in respect of machineries which are mentioned at serial Nos. 1 to 4 of the Table below Rule 57Q(1) of the Rules, He pleads that the issue before the lower authorities was only that dust collector filter bags were parts of the pollution control equipment and not the issue that pollution control equipment is a part of the cement plant.

4. Shri S.K. Bansal, learned C.A. Pleads that since the pollution control equipment is a part and parcel of the cement plant and is covered under heading 84.74, therefore bags are part of cement plant itself.

5. I have considered the submissions made by both the sides. I find that the appellants before the Commissioner (appeals) has specifically pleaded that pollution control equipment and their parts are part and parcel of the cement mill machinery and they have already quoted the Tribunal's decisions on this issue. Despite this, the Commissioner (Appeals) has not given any finding on the points raised before him and simply gone with the show cause notice where it was alleged that dust collector filter bags are part of the pollution control equipment and are not eligible for modvat credit. I find that when in large number of decisions this issue has been decided by the Tribunal and there is no contrary decision produced by the Revenue, there is no reason for not following the decisions of the

Tribunal. I, therefore, hold that disputed item i.e. dust collector filter bags are eligible for modvat credit.

The order of Commissioner (Appeals) denying credit on dust collector filter bags is set aside. Rest of the order of the Commissioner (Appeals) is upheld.

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