

Jaypee Rewa Plant Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-28-2005

Reported in : (2005)(183)ELT305TriDel

Judge : A T V.K., P Bajaj

Appellant : Jaypee Rewa Plant

Respondent : Commissioner of Central Excise

Judgement :

1. This is an application by M/s. Jaypee Rewa Plant for waiver of pre-deposit of Central Excise duty of Rs. 6,13,335/- and penalty of Rs. 5,000/-.

2. Shri B.L. Narasimhan, learned Advocate submitted that the applicants, engaged in the manufacture of cement and clinkers, are availing cenvat credit in respect of lubricating oil; that the Department has confirmed the duty on mixed oil sludge which comes out of the machine and the duty has been confirmed as the waste product is nothing but lubricating oil; that no duty is payable as the goods in question is nothing but mixed oil sludge on which no duty is payable as no manufacturing activity has taken place. Reliance has been placed on the decision in the case of Vikrant Tyres Ltd. v. Commissioner of Central Excise, Mysore - 2004 (171) E.L.T. 23 wherein it has been held that oil coming into existence not as a result of production or manufacture and as such is not excisable. We also heard Shri P.K. Rai, learned DR who submitted that mixed oil sludge emerges out of modvatable goods on which Modvat credit had been availed and as such duty is

payable by them.

3. We have considered the submissions of both sides. In view of the fact that the product on which duty is being confirmed is sludge, the applicants have made out a strong prima facie case in their favour.

Accordingly, we stay the recovery of the entire amount of duty and penalty during the pendency of the appeal which is posted for regular hearing on 26-5-2005.

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