

Associated Cement Cos. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-17-2005

Reported in : (2005)(102)ECC344

Judge : M T K.C.

Appellant : Associated Cement Cos. Ltd.

Respondent : Cce

Judgement :

1. Shri S.K. Bansal, Ld. C.A., pleaded that the appellants have utilized the disputed items in the mines and as per the Hon'ble Supreme Court's decision in case of jaypee Rewa Cement v. CCE, 2001 (133) ELT 3 (SC), they were entitled for the credit on the disputed items and they had no intention to evade payment of duty. Therefore, penalty is not imposable on them.

2. Shri P.M. Rao, Ld. JDR pleaded that now the Hon'ble Supreme Court in the case of CCE v. J.K. Udaipur Udyog Ltd., 2004 (171) ELT 289 (SC) have held that inputs must be used within the factory of the production. Explosives for blasting mines to excavate limestone used in manufacture of cement are not eligible for credit as these are not used within the factory of production. Therefore, the credit was disallowed to the appellants as per the order of the Supreme Court. However, he has left open the issue of penalty.CCE v. J.K. Udaipur Udyog Ltd. (supra) have held that Cenvat Credit is allowable only when the inputs are used within the factory of production. Since goods were not used within the factory, Credit was

correctly denied. Considering the facts and circumstances of the case, I find that the appellants had taken the credit on the disputed items used in the mines on the basis of the Supreme Court's judgment in Jaypee Rewa Cement (supra). Therefore, it cannot be said that they have intention to evade payment of duty. In the circumstances, penalty imposed on the appellants is set aside. The order of the Commissioner (Appeals) is modified to this extent, appeal is otherwise rejected.

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