Collector of Central Excise Vs. Subham Cements

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-06-1987

Reported in : (1987)(14)ECC385

Appellant : Collector of Central Excise

Respondent : Subham Cements

Judgement :

1. Question for decision in this appeal by Revenue is eligibility of the respondents to benefit of concession available to mini cement plant under Notification No. 194/79-C.E., dated 30-5-1979 as amended.

2. We have heard Smt. Chander, JDR for the appellant and Shri K.G.Sooji, Consultant for the respondent and have perused the papers placed before us. There is no dispute that the respondents total installed capacity does not exceed 200 tonnes per day and thus fulfils the requirement under explanation (a) to the Notification. There is also no dispute that the unit has no kilns. Smt. Chander stated that because the unit has no kilns it does not fulfil the requirement of definition of mini cement plant contained in the explanation to the Notification.

Shri Sooji however submitted that the kilns requirement is also there with reference to large cement plant defined in Clause (b) of explanation to the notification and therefore the capacity of cement plant would alone be material for definition. He submitted whether cement plant is a mini cement plant or large cement plant would depend on its licensed or registered capacity and not on the existence of kilns. About the process of manufacture both the parties explained that the respondent obtained duty paid clinkers from other plants. These clinkers are pulverised by the respondents in their unit.

3. The explanation to the Notification No. 194/79-C.E., dated 30-5-1979 which alone is material for decision of the present appeal is reproduced below :- "(a) the expression "mini-cement plant" means a cement plant consisting of one or more kilns and having a total installed capacity not exceeding 200 tonnes per day, (b) the expression "large cement plant" means a cement plant consisting of one or more kilns and having a total licensed or registered capacity exceeding 200 tonnes per day." It would be seen that Clause (a) of the explanation sets out a definition of the mini cement plant. There is no dispute that the respondents unit has no kiln. To existence of a kiln is an indispensable requirement of the mini cement plant under the definition. We do not think that this essential ingredients or requirement of the definition can be allowed to controverted by some understanding or interpretation of the expression. We, therefore, hold that the respondents unit does not fulfil the kiln requirement of mini cement plant as defined in the explanation. That being so, the concession under the Notification would not be available to the respondent. We, therefore, set aside the impugned order and restore the demand confirmed by the Assistant Collector. The appeal is thus allowed.