

India Cements Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jul-06-2005

Reported in : (2005)(103)ECC63

Judge : P Chacko

Appellant : India Cements Ltd.

Respondent : Cce

Judgement :

1. The lower authorities disallowed to the appellants Modvat credit on capital goods used in their mines during October 1995 to February 1995.

Hence these appeals.

2. Heard both sides. Ld. Consultant for the appellants submits that some of the capital goods, namely bulldozer and tipper, were used as material handling equipments in the factory as well as at the times and hence they were eligible for capital goods credit on account of having been used in the factory. Ld. Consultant relies on the following decisions of the Tribunal: India Cements Ltd. v. CCE, 3. Ld. SDR submits that, for the benefit of credit under Rule 57Q during the material period, the capital goods should have been used exclusively in the factory. It is further submitted that input duty credit or capital goods credit cannot be allowed in respect of any goods used in of factory mines after the decision of the Hon'ble Supreme Court in the cases of Jaypee Reiva Cement v. CCE, and CCE 4. After

giving careful consideration to the submissions, I note that the original authority has found that the above material handling equipments were used for transporting materials from mines to the cement factory. There is no finding to the effect that these equipments were used for handling material within the cement factory. In the circumstances, the Tribunal's decision in *India Cements (2005)* (supra) [wherein capital goods credit was allowed on bulldozer used as material handling equipment both inside the cement factory and at the mines] is of no aid to the appellants' case. The same is the situation in the case of *India Cements (2002)* (supra), wherein capital goods credit was allowed to parts of conveyor belt used both in the mines and in the factory. In the case of *India Cements (2004)* (supra), capital goods credit was allowed to spares of dumper which was used for transporting limestone from mines to crusher. In that case the mine was adjacent to the cement factory, unlike in the instant case. Above all, the view taken by the Tribunal in the cited cases cannot hold good in view of the Supreme Court's decision in *Jaypee Rewa Cement* (supra) and *J.K.Udaipur Udyog Ltd.* (supra). In the case of *Jaypee Rewa Cement*, the Apex Court categorically disallowed Modvat credit under Rule 57Q in respect of capital goods used in of factory mines. In the case of *J.K. Udaipur Udyog Ltd.* (supra), their Lordships refused to consider a distantly located mine connected by ropeway to the cement factory, as an extension of the factory. The cumulative effect of the decisions of the Apex Court is that the benefit of Modvat credit is not available to capital goods used exclusively in of-factory mines and to those used for transporting materials from such mines to the cement factory.

5. In the result, the impugned orders get affirmed and appeals are dismissed.

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