Shree Cement Limited Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-17-2006

Judge : R Abichandani

Appellant : Shree Cement Limited

Respondent : Cce

Judgement :

1. This appeal is taken up for final hearing at the request of both the sides since the question involved is short and is covered by the decision of the Hon'ble the Supreme Court in Vikram Cement v.Commissioner of Central Excise, Indore reported in 2006 (197) ELT 145 (S.C.) warranting a remand as was done in that case which is evident from para 5 of the judgment.

2. At the outset, the learned Counsel for the appellant stated that the disallowance of modvat credit or Rs. 2302/-, taken on invoices which were not in the name of the appellant, is not challenged due to the smallness of the amount. Therefore, the only question regarding disallowance of credit of Rs. 1,72,662/- taken on goods used in the mines survives for consideration. The requirement of pre-deposit is waived in view of the facts and circumstances of the case and the matter is taken up for final hearing.

3. The Commissioner (Appeals), in paragraph 21.2 of the impugned order, has observed that from the definition of Rule 57Q it is clear that modvat under the said rule was admissible only for the "capital goods" used in the factory of production

and that admittedly the goods in question were used in the mines of the appellants and not in their factory. It was, therefore, held that the ratio of the decision of the Hon'ble the Supreme Court in Jaypee Rewa case was not applicable to the present case and that the case was squarely covered by the decision of the Apex Court in CCE, Jaipur v. J.K. Udaipur Udyog , in which it was held that the mine from where the raw material is extracted and is situated at some distance, but no manufacturing process is carried on, cannot qualify to be a factory. It was, therefore, held that the mine cannot be treated as factory, and the modvat credit on the items used in mines was disallowed.Vikram Cement v. CCE, Indore , while considering the admissibility of modvat credit has held in paragraph 25 of the judgment that, the decision in In Vikram Cement v. CCE, Udaipur reported in 2006 (197) ELT 145 (SC), the question whether modvat/cenvat credit could be taken on inputs and capital goods used in the mines directly arose and it has been held as regards the modvat/cenvat credit on capital goods, that if the mines are captive mines so that they constitute one integrated unit together with the concerned cement factory, modvat/cenvat on capital goods will be available to the assessee. On the other hand, if the mines are not captive mines but they supply to various other cement companies of various assessees, modvat/cenvat credit on capital goods used in such mines will not be available to the concerned assessee under the appropriate modvat/cenvat Rules. The Hon'ble the Supreme Court remanded the matters to the respective original authorities for decision only on this issue.

4. In the present case, the Commissioner (Appeals) has simply proceeded on the ratio of the judgment in J.K. Udaipur Udyog (supra), which is no longer a good law in view of the decision of the larger bench of the Hon'ble the Supreme Court in Vikram Cement. The authorities have not applied their mind to the issue whether the mines are captive mines from which they supplied to various other concerns. The matter will, therefore, have to be reconsidered on this aspect only by the adjudicating authority.

5. The impugned order is, therefore, set-aside to this limited extent to which the credit of Rs. 1,72,662/- was disallowed on the goods used in the mines. The impugned order is therefore set-aside and the matter is remanded to original adjudicating authority for an appropriate decisions thereon in accordance with the

law and in light of the decisions of the Hon'ble the Supreme Court in Vikram Cement (supra).

The appeal is accordingly allowed.