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Manikgarh Cement Vs. Ccex

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-15-2007

Judge : J Balasundaram, Vice

Appellant : Manikgarh Cement

Respondent : Ccex

Judgement :

1. I have heard both sides on the appeal against the order of the Commissioner of Central Excise (Appeals), Nagpur, who has held that the appellants herein are not eligible to capital goods credit on welding electrodes used for repair and maintenance in their factory.

2. I find that earlier credit was being held to be admissible to welding electrodes but subsequent to the decision of the Larger Bench in the case of Jaypee Rewa Cement v. CCE, Raipur , it has been held that the credit is not admissible at these items.

Although, the learned Counsel draws attention of the Bench to the fact that in there own case, the Tribunal had extended the benefit of credit, it is also true that after the Larger Bench's decision (cited supra), benefit has not been extended to the assessee as seen from the Tribunal's order in the appellant's own case . Although, the learned Counsel cites the Apex Court's decision in the case of CCE, Navi Mumbai v. Amar Bitumen & Allied Products Pvt. Ltd. 2006 (202) ELT 213 (SC) to support his contention that the earlier order of the Tribunal in their own

case has not been appealed against by the Revenue and therefore, the issue has attain finality and there is no option to appeal, and therefore, the Revenue cannot pick and choose the different views even in the case of other assessee, the fact remains that the earlier decision has not noted the Larger Bench decision in thr case of Jaypee Rewa (cited supra) and after the Larger Bench's decision, the benefit of credit had not extended to the assessee. The learned Counsel also cites the decision of the Apex court in the case of Vikram Cement v. CCE, Indore 2006 (197) ELT 45 (SC).

However, this decision is not relevant to the facts of the present case for the reason that the issue before the Apex Court was not the admissibility of the capital goods credit on welding electrodes, which issue has specifically been considered in the Larger Bench's decision in the case of Jaypee Rewa Cement (cited supra).

3. In the light of the above discussion, I agree with the view of the Revenue that the credit is not admissible on welding electrodes used for repair and maintenance and hence, uphold the impugned order and reject the appeal.

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