

Monnet Sugar Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-13-2007

Reported in : (2008)(127)ECC49

Judge : P Das

Appellant : Monnet Sugar Ltd.

Respondent : Cce

Judgement :

1. Ld. Advocate on behalf of the appellant submits that in this case, the credit was denied on Welding Electrodes and imposed penalty of equal amount. He submits that the Hon'ble Rajasthan High Court in the case of Shree Neer Cement Ltd. rejected the reference application filed by the Revenue against the admissibility of Cenvat credit on Welding Electrodes. He further submits that in any event, there is contrary decision of the Tribunal on this issue and, therefore, penalty is liable to be set aside.

2. Ld. DR on behalf of the Revenue submits that the Larger Bench of the Tribunal in the case of Jaypee Rewa Plant held that Welding Electrode is not admissible for Cenvat Credit. He further submits that this Tribunal in the case of J.K. Cement 2007 (211) ELT 235 after discussing the decision of the Hon'ble Rajasthan High Court held that Cenvat credit is not eligible on Welding Electrodes.

3. After hearing both the sides and on perusal of the records, I find force in the submissions of the Id. DR. The Tribunal consistently in series of decisions held that Welding Electrodes is not eligible for Cenvat credit. Therefore, the denial of credit on welding electrode is upheld. But, the imposition of penalty of equal amount is not justified. It is well settled that when there is a interpretation of the provisions and there is no allegation of any malafide on the part of the assessee, no penalty shall be imposed. I also find that this Tribunal in the case of L.H. Sugar Factories Ltd. vide Final Order No.1354-1360/07-SM (BR) dated 5.7.07 set aside the penalty on inadmissibility of credit on Welding Electrodes. Accordingly, the imposition of penalty is set aside. The appeal is disposed of in the above terms.

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