

Gajambuja Cement Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Ahmedabad

Decided On : Nov-21-2007

Reported in : (2008)(124)ECC141

Judge : V T M.

Appellant : Gajambuja Cement

Respondent : Cce

Judgement :

1.1 These two appeals involve an identical issue and hence are being dealt with by a common order.

1.2 The Appeal No. E/191/2007 is against the order of the Commissioner No. 29/BVR/Commissioner/2006 dt.27.10.06, by which an amount of Rs. 49,791/- was sought to be denied as credit and penalty of Rs. 49,791/- was imposed.

1.3 The Appeal No. E/192/2007 is against the order of the Commissioner No. 28/BVR/Commissioner/2006 dt.27.10.06, by which an amount of Rs. 1,29,783/- was sought to be denied as credit and penalty of Rs. 1,29,784/- was imposed.

a) The appellant is a manufacturer of cement and they have their captive mines adjacent to their factory. They used furnace oil as fuel in generating electricity and the electricity so generated by them was being used partly in their factory and partly in the mines in relation to the mining activities. The electricity consumed at mines for various purposes is distributed through transformer. A portion of the

electricity is used for operating crusher used for crushing lime stone and for operating conveyer conveying lime stone to the cement plant.

b) In other words, a portion of electricity generated is supplied to the manufacturing unit and a portion to and through the transformer in the mines and from the transformer supply is used for operating conveyer system and for various other operations in the mines.

c) Show cause notice issued proposing to disallow the credit attributable to furnace oil used in generation of electricity which was used in crusher, conveyer system, and transformer all used in the mines.

d) The Commissioner allowed the credit attributable to the input which has gone into the production of electricity used in the crusher and conveying system treating the crusher and conveying system as part of the factory as their functions are integrally linked to manufacturing cement. However, he held that the function of transformer cannot be linked to the manufacturing activity of cement and hence that portion of the electricity used by the transformer cannot be treated as used in relation to manufacture of cement and disallowed the credit.

4.1. The learned advocate for the appellant submits that their mines are a captive mines; the entire limestones mined are used only in their factory; the reasoning adopted by the Commissioner to treat the activities of crusher and conveyer system as part of the manufacturing activities shall hold good for the activities of transformer also and therefore the disallowance of credit is incorrect and the imposition of penalty is also not proper.

4.2 He relies on the Supreme Court's judgment in the case of Vikram Cement reported in 2006 (197) ELT 145 in support of his contention that when the mines cater exclusively to the factory, then the duty paid on the capital goods used in the mines are eligible for credit to be availed by the cement manufacturing units and the entire mines should be treated as part and parcel of the factory. On these findings, the Hon'ble Supreme Court also allowed the cenvat credit of duty paid on explosives used in the mines to the cement manufacturing units.

4.3 The duty paid on the capital goods namely the crusher and transformers are available as credit for the concerned cement manufacturing unit. Therefore to treat only the crusher as used in mines as used in the manufacturing of cement but not the transformer is not correct.

5.1 The learned SDR supports the decision of the Commissioner and submits that the entire captive mines cannot be treated as part and parcel of the factory manufacturing the cement; it depends upon the functions which are carried out and the nature of the activities undertaken in the mines.

5.2 He submits that lime stone is the output of the mine, and the same is the input for cement manufacturing unit; crushing the lime stone can be considered as a process for the purpose of manufacturing of cement and that the functions of the conveyor can be treated as a part of the manufacturing process of the cement; but the functions and the role of the transformer are prior to grinding of the lime stone and hence can not be considered as activity relating to manufacture of cement.

5.3 He relies on the decision of the Hon'ble Supreme Court in case of Vikram Cement 2001 (194) ELT 3 (SC). Since the role of the transformer in the mines in the present case, is not relatable to the manufacturing of cement, the electricity used for the same cannot be treated as credit on input used in the electricity.

5.4 He also relies on the decision of the Hon'ble High Court in case of Indo Rama Synthetics Ltd, in support of his contention that for the eligibility of credit is linked to use of electricity for excisable activity.

5.5 He also relies on the decision of the Hon'ble High Court in case of Solalris Chemtech Ltd. 2007-TIOL-135-SC-CX, to support his contention that the nature of use whether for excisable or other purposes is relevant for allowing credit.

6. I have carefully considered the submissions from both sides. The Commissioner has made a special distinction on the role of transformer versus that of the crusher both used in the mines area. The crusher is used for crushing the lime stone which is an input for manufacturing cement. However, he held that the transformer cannot be considered as used in relation to the manufacturing of cement unlike the

crushing which he held to be used in the manufacturing of cement. The Hon'ble Supreme Court in case of Vikram Cement 2001 (194) ELT 3 (SC) has clearly held that the captive mines are to be construed as an integral unit of the concerned cement factory. In view of this, to treat the role of crusher and the transformer, both used in captive mines differently does not appear to be reasonable. If the duty paid on the capital goods such as crusher and transformers are available as credit for the concerned cement manufacturing unit, then to treat only the crusher as used in relation to the manufacturing of cement, and to treat the transformer used in the mine as not used in the manufacturing of cement, may not be advisable. This is not like a situation where electricity is used in partly in residential colony and the balance in the cement manufacturing unit. If the activities of captive mines are to be held to be integral with the activities of cement plant, there will not be any justification to distinguish the role of transformer from that of the crusher as sought to be done by the commissioner.

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