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J.K. Sugar Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-14-2007

Reported in : (2008)(127)ECC229

Judge : S Kang, Vice

Appellant : J.K. Sugar Ltd.

Respondent : Cce

Judgement :
2. The appellant filed these appeals against the common impugned order.

In this case, the demand was confirmed after denying the credit in respect of welding electrodes, jointing sheets and steel plates.

3. The contention of the appellant is that demand raised vide show-cause notice dated 8.11.2004 while denying the credit in respect of welding electrodes availed during the period April 2001 to August 2003 is time barred. As the appellants were regularly filing monthly returns showing that appellants were availing the credit on welding electrodes, therefore, no suppression can be alleged against the appellant that they had taken credit of Rs. 1,93,688/- in respect of welding electrodes by suppressing the facts.

4. In respect of jointing sheet and steel plates, the contention is that the same are used in the plant. Jointing sheets are used to prevent leakage of steam and gases from the pipes and steel plates are used for repair and maintenance of capital

goods like boiler, pan, centrifugal machine, juicer clarifier etc. The contention is that the appellant produced evidence in this regard which is not considered by the lower authority. This fact was specifically replied to the show-cause notice dated 14.2.2005.

5. The contention of the Revenue is that the welding electrodes are not entitled for credit as capital goods not inputs and relied upon the decision of the Tribunal in the case of Triveni Engg. & Industries Ltd. v. CCEJaypee Rewa Plant v. CCE .

6. In respect of jointing sheets and steel plates, the contention is that the same are used for repair and maintenance purpose, therefore, are not entitled for credit.

7. I find that issue in respect of welding electrodes settled by the Tribunal in favour of the Revenue decision relied upon by the Revenue.

Hence the appellants are not entitled for credit in respect of welding electrodes. Further, I find that demand of Rs. 1,93,688/- was confirmed by denying credit in respect of welding electrodes availed during the period April 2001 to August 2003 and show-cause notice was issued on 8.11.04 alleging suppression. I find that appellants were regularly filing returns showing taking of credit in respect of welding electrodes taking of credit in respect of welding electrodes during this period, therefore, suppression of facts with intent to evade payment of duty cannot be alleged against the appellant hence demand of Rs. 1,93,688/- is time barred.

8. In respect of jointing sheets and steel plates, I find that jointing sheets are used in the plant to prevent leakage in the pipes, therefore, are entitled for credit in respect of plates which are used for repair and maintenance of boiler etc. which are capital goods. I find that Hon'ble Rajasthan High Court in the case of Union of India v.Hindustan Zinc Ltd. reported in 2007 (214) ELT 510 held that MS/SS plates brought in factory for repair and maintenance of plant and machinery which used in the manufacture of excisable goods and which are necessary for running of plant and up keeping of directly involved for manufacture of products are eligible for credit. Against the decision of Hon'ble Rajasthan High Court, the Revenue filed appeal and Hon'ble Supreme Court dismissed the appeal reported as 2007 (214) ELT A-115. In view of the above decision, the appellants are entitled for credit in

respect of plates also.

9. In respect of the penalty on account of denial of credit in respect of welding electrodes, I find as the issue is now settled by the Larger Bench and prior to this there was divergent views, therefore, it is not a case of imposition of penalty. Penalty imposed on the appellant is set aside. The appeals are disposed of as indicated above.

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