C.C.E. Vs. Ambica Stone Crushers and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-21-1995

Reported in : (1995)(80)ELT555TriDel

Appellant : C.C.E.

Respondent : Ambica Stone Crushers and

Judgement :
1. This is an appeal filed by the department against the order of the Collector of Central Excise (Appeals), New Delhi, dated 31-8-1987.

2. Learned D.R. stated that the respondents manufacture regulated clinker binder by crushing clinker with lime. This mixture has similar end-use as cement. No. intimation regarding its manufacture was given by the respondents to the department. On investigation the product was found to conform to cement classifiable under T.I. 23 of C.E.T.3. The main contention of the respondents before the lower authorities has been that their product was not cement as they did not use gypsum in its manufacture.

4. However, it was department's contention that use of gypsum was not necessary or essential for producing cement.

5. The cement itself is of various types including quick setting type, rapid hardening type, water-proof type etc. as evident from tariff itself which during the relevant time read as follows :- (1) Grey portland cement (including ordinary

portland cement, portland-pozzolana cement and portland slag cement), masonry cement, rapid hardening cement, low heat cement and water-proof (hydrophobic) cement.

6. It was the department's contention that the gypsum is usually utilised during the manufacture of cement because of its use in regulating the setting of the product i.e. it slows down the setting.

But its use is not essential.

7. The Collector (Appeals) has relied upon the definition of cement given in McGraw-Hill Encyclopedia of Science & Technology which mention that cement is manufactured usually with gypsum. The use of the word 'usually' is significant because it shows that it is not imperative to mix gypsum for manufacture of cement.

8. As a matter of fact the term 'CEMENT' has been defined in the McGraw-Hill Encyclopedia of Science & Technology as follows :- "Dry powder made from silica, alumina, lime, iron oxide and managanese which hardens when mixed with water and used as an adhesive for assembling of surfaces which are not in close contact." 9. Similarly, Concise Chemical Dictionary by Bennett has defined various types of cements such as cement natural, cement neat, cement non-staining, cement rock, cement rosendle, and cement slag. Of these natural cement has been defined as a substance formed of naturally occuring mixture from lime and clay at a temperature below syndering point. Similarly, slag cement has been defined as a cement prepared by mixing powder glass furnace slag with slag lime.

10. The above definition shows that admixture of gypsum is not essential for a product to be treated as cement.

11. It was, therefore, their prayer that the order of the Collector (Appeals) may be set aside.

12. Learned counsel for the respondent opposed the prayer stating that the product manufactured by the respondents is not cement classifiable under Tariff Item 23(1) as claimed by the department. In this connection she would draw

attention to the description of the Heading 23(1) which covers grey portland cement. It was their contention that during the manufacture of grey portland cement gypsum is usually used; And only a product containing admixture of gypsum is normally known in the market as grey portland cement. In fact, in its memorandum of appeal the department has itself admitted that for the manufacture of the ordinary portland cement use of gypsum is essential, as adding of Gypsum to Clinker imparts the quality of "De-setting" to the product.

13. That apart admittedly their product was being sold as a regulated clinker binder as evident from the invoices issued by the firm. It was also their contention that admittedly their price was lower than that of the cement which itself supports the fact that it was not treated in the market as cement.

14. We have considered the above submissions. We observe that the Central Excise Tariff as it stood during the relevant period included a Heading 23 which reads as follows :- (1) Grey portland cement (including ordinary portland cement, pozzolana cement and blast furnace slag cement), masonry cement, rapid hardening cement, low heat cement and waterproof (hydrophobic) cement.

15. This shows that Heading 23 covers cement of all varieties including :- 16. The cement has been defined in the McGraw-Hill Encyclopedia of Science & Technology as follows :- "Any substance that acts as a bonding agent for materials. In construction land engineering the word almost always means hydraulic cement, it being by far the most important." 17. Portland cement is a generic name for a hydraulic cement. Portland cement is composed mainly of high-limed calcium silicates with lesser amounts of high-limed aluminates and ferrites which are ground together with a small amount of gypsum to a fine powder. Whereas cement of a type commonly known as sagol is obtained by heating lime stone and burnt coal in a kiln. Similarly, Ash Moh is a type of cement obtained by fine grinding of Paddy husk, Ash and. Hydra ted lime with an additive.

18. Since in the present case admittedly gypsum is not used during the manufacture of the product in question, therefore, the learned Counsel is correct in pointing out that it cannot be considered as portland cement classifiable under T.I. 23(1). However, as noted above Heading 23 covers cement of all varieties, and

therefore cement of a type other than portland cement would fall under 23(2) and will be classifiable and liable to duty as such; it will include inter alia cement of the type known as Sagol and Ash Moh and the type of the product manufactured by the respondents since admittedly it acts as a binder and the appellant is marketing it as a regulated clinker binder.

19. In view of the above finding the order of the Collector (Appeals) is set aside and the matter is remanded to the Assistant Collector for redeterminaion of duty liability; And since one of the criteria for imposition of penalty is to judge the seriousness of the offence with reference inter alia to the duty also, therefore, the Assistant Collector is directed to readjudicate the case in the light of the above observations and findings.