
(2015) 07 SC CK 0129

In the Supreme Court Of India

Case No : Civil Appeal Nos. 5752-5755 of 2005

Commissioner of Central Excise, Indore

APPELLANT

Vs

Dhar Cement Ltd.

RESPONDENT

Date of Decision : 21-07-2015

Acts Referred:

Central Excise Rules, 1944 — Rule 209A

Citation : (2015) 322 ELT 411 : (2015) 52 GST 366

Hon'ble Judges : A.K. Sikri, J;N.V. Ramana, J

Bench : Division Bench

Advocate : Yashank Adhyaru, Senior Advocate, Nisha Bagchi, Shirin Khajuria, B. Sunita Rao, Pooja Sharma, Anurag, Sujita Srivastava and B. Krishna Prasad, for the Appellant; K. Radhakrishnan, Sr. Adv., Ashutosh Upadhyay, Sumit Kumar Sharma and Niraj Sharma, Advocates

Final Decision : Dismissed

Judgement

1. The Respondents are engaged in the manufacture of ordinary Portland Cement falling under Chapter 25 of the Schedule to the Central Excise Tariff Act, 1985. The Respondent availed the benefit of Notification No. 24/91-C.E., dated 25-7-1991 and cleared the cement at concessional rate of duty. The Respondent obtained a Certificate No. 92/LMI/(7)/94/1699, dated 27-7-1995. Based on intelligence that the Respondent had obtained incorrect certificate, the officer of Directorate General of Anti Evasion (DGAE) searched the premises and recovered incriminating documents. A show cause notice dated 30-11-1998 was issued to the Respondent on the ground that the annual capacity of the plant is more than 1,98,000 tonnes per annum, therefore, they are not entitled of the concessional rate of duty and further to show cause as to why Central Excise duty amounting to Rs. 6,22,02,982/- evaded by the Assessee during the period from 1-11-1993 to 30-6-1998 should not be recovered and penalty under Rule 209A of the erstwhile Central Excise Rules, 1944 should not be imposed upon Respondent Nos. 2 and 3. Commissioner vide order confirmed the demand of Rs. 6,22,02,982/- from the Assessee. He also imposed a penalty of Rs. 1 lac each on

Respondent Nos. 2 and 3 holding that Respondents deliberately mis-declared their installed capacity of plant. Respondents filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as CESTAT). The CESTAT vide its Final Order No. 60-62/2002-C remanded the matter with an observation that competent authority shall re-adjudicate the matter afresh. In the meantime, the Commissioner of Industries, Bhopal, vide his letter dated 17-6-2003 and Corrigendum dated 3-7-2003 stated that though in some case the unit has mentioned their capacity to be more than 1,98,000 tonnes per annum but on the basis of the capacity analyzed by the Small Industries Service Institute (SISI), its installed capacity was found to be 1,94,040 tonnes per annum. After remand, the Commissioner by his adjudication Order No. 83/Commr/CEX/IND/2003, dated 23-9-2003 confirmed the demand of Rs. 6,22,02,982/- for recovery from the Assessee and imposed a penalty of same upon them. He also imposed a penalty of Rs. 20 lakhs each on Respondent No. 2 and Respondent No. 3. Further, he held that the Assessee is not eligible for exemption under the notification. The Respondents filed an appeal before CESTAT. The CESTAT vide the impugned order has allowed the appeal simply on the ground that Commissioner of Industries has certified that the installed capacity of the plant was less than 1,98,000 tonnes per annum during the relevant period and this certificate would bring the issue in favour of the Respondent herein.

2. We have heard the present appeal in detail which is filed by the Department questioning the correctness of the orders passed by the CESTAT [2005 (191) E.L.T. 347 (Tribunal)] .

3. The only issue is as to whether the Respondent, an industrial unit, is having a plant with installed capacity of less than 1,98,000 tonnes per annum for manufacturing ordinary Portland Cement to enable it to get the benefit of Notification No. 24/91-C.E., dated 25-7-1991 and Notification No. 5/93, dated 28-2-1993.

4. We find from the impugned order that the CESTAT in this behalf relied upon the certificate issued by the Commissioner of Industries which had certified the installed capacity to be 1, 94, 040 tonnes per annum. No doubt, normally such a certificate is to be acted upon. However, learned Counsel for the Appellant pointed out to us that the Directorate of Industries had conceded that it had no wherewithal to ascertain the installed capacity and it simply went by the report of SISI. On the other hand, we find that the Revenue is also relying upon plethora of material on the basis of which it is argued that the installed capacity is much more than 1,98,000 tonnes per annum. Some of the material produced is that of Respondent itself and it is argued that the Respondent had accepted that its installed capacity was more than 1,98,000 tonnes per annum. In a case like this, we are of the opinion that the CESTAT should have considered the material placed by the Revenue and only then come to a conclusion as to whether the certificate issued by Commissioner of Industries should be acted

upon or not.

5. We are of the opinion that the matter be remanded back so that the material on which the Revenue relied upon is also discussed by the CESTAT and then a finding be arrived at to this effect. The impugned order is accordingly set aside and the matter is remanded back to the CESTAT for fresh consideration on the aforesaid aspect. We expect the CESTAT to decide the matter within six months. The appeals stand disposed of.