(2002) 11 SC CK 0044

In the Supreme Court Of India

Case No : Civil Appeal No. 2355 of 2000

Commr. of C. Ex. APPELLANT

Vs

Associated Cement Companies Ltd. RESPONDENT

Date of Decision : 28-11-2002

Acts Referred:
Central Excise Rules, 1944 — Rule 57A, 57B

Citation : (2003) 85 ECC 736 : (2003) 151 ELT 12 : (2003) 9 SCC 74

Hon'ble Judges : M. B. Shah, J;D. M. Dharmadhikari, J

Bench : Division Bench

Advocate : Ranjit Kumar, Ashok K. Srivastava and B.K. Prasad, for the Appellant; A. N. Haksar Rajeev Shakdhar, U.A. Rana, Arvind Kumar and Gunjan Kayastha for Gagrat and Co., for the Respondent

Final Decision : Allowed

Judgement

1. Heard the learned Counsel for the parties.

2. This appeal is filed against the judgment and order dated 8-9-1999 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, South Zone, Madras (for short ''the Tribunal'') in Appeal No. E/Stay/94/99 & E/1073/99 whereby the Tribunal allowed the appeal of the assessee by holding that in previous decisions rendered by the Tribunal, it was decided that MODVAT credit is available for high speed diesel oil used as fuel for generation of electricity which in turn is used for running the cement plant for the period prior to 1-3-1997 as well as subsequent thereto up to 1-3-1998. It is also pointed out that Tribunal has all throughout taken a consistent view that MODVAT credit is required to be extended to HSD oil used as fuel for generation of electricity which in turn is used for running of machine for manufacture of final product.

3. Mr. Ranjit Kumar, learned Senior Counsel appearing for the Department, referred to all relevant Rules, Trade Notice issued u/s 57A as well as Notifications on the subject and has also succinctly pointed out the contentions which are

sought to be raised by the Department.

4. In our view, unamended Rule 57B leaves no doubt on the issue in question. It provides that notwithstanding anything contained in Rule 57A, the manufacturer of final product shall be allowed to take credit of the specified duty paid on the goods used for generation of electricity or steam used for manufacture of final product or for any other purpose within the factory of production. This rule was amended only on 2-3-1998 by adding following explanation :-

"Explanation. - For the purposes of this sub-rule, it is hereby clarified that the term ''inputs'' refers only to such inputs as may be specified in a notification issued under Rule 57A."

5. In this view of the matter, in our view, the Tribunal was fully justified in arriving at the conclusion that the assessee was entitled to get the benefit of the notification till Rule 57B was amended. In the result, this appeal fails and is dismissed. There shall be no order as to costs.

