(2016) 04 CESTAT CK 0001

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 1196, 1197, 1198 Of 2007

Hindustan Zinc Limited APPELLANT

Vs

C.C.E., Jaipur-II RESPONDENT

Date of Decision : 13-04-2016

Acts Referred:

Erstwhile Central Excise Rules, 1944 — Rule 57AA(d)
Cenvat Credit Rules, 2002 — Rule 2(g)
Central Excise Act, 1944 — Section 11AC

Citation : (2016) 04 CESTAT CK 0001

Hon'ble Judges : S.K. Mohanty, J

Bench : Single Bench

Advocate : Sukriti Das, M.R. Sharma

Final Decision : Disposed Of

Judgement

1. These appeals are directed against the impugned order dated 14th February, 2007 passed by the Commissioner (Appeals-II), Customs and Central

Excise, Jaipur, upholding disallowance of Cenvat Credit on cement in the adjudication order.

2. Brief facts of the case are that the appellant herein is engaged in the manufacture of Zinc Lead. The appellant has a concentration plant for

concentration of the Zinc Ore procured from the mines. In the process of mining, when the ore is dug out, cavities are formed and for filling those

cavities, the appellant uses cement slurry mixture. The appellant avails Cenvat credit of Central Excise duty paid on cement used for the said purpose

under the head 'input'. Taking of cenvat credit on cement during the disputed period was disallowed by the Central Excise Department on the ground

that cement cannot be considered as 'input' for the manufacture of final products.

3. Ms. Sukriti Das, the ld. Counsel appearing for the appellant submits that cement is used to prevent the mines from cavity, which results in

continuous procurement of ore for feeding into the process of manufacture of the ultimate final product. Thus, in terms of broader definition of input

contained in Rule 57AA(d) of the erstwhile Central Excise Rules, 1944 and Rule 2(g) of the Cenvat Credit Rules, 2002, Credit on Cement is available

to the appellant. The ld. Advocate relies on the recent judgment of Honâ??ble Supreme Court in the case of Ramala Sahkari Chinni Mills Ltd. Vs.

CCE, Meerut-I, reported in 2016 TIOL 20 (SC) CX-LB and also the judgment of Honâ??ble Gujarat High Court in the case Mof undra Ports &

Special Economic Zone Ltd. Vs. CCE & Custom reported in 2015 (39) STR 72 6(Guj.) to state that that Central Excise duty paid on Cement is

permissible as cenvat credit.

4. On the other hand, Shri M.R. Sharma the ld. D.R. appearing for the respondent submits that cement has not been used by the appellant in or in

relation to manufacture of the final product, and thus, in terms of the definition of input, cement shall not be eligible for cenvat benefit. He further

submits that in the case of the appellant itself, the Honâ??ble Supreme Court and the Honâ??ble Rajasthan High Court have held that cement being

used as a construction material, credit should not be available to the appellant. In this context, he relies on the judgment of Honâ??ble Supreme Court

in the case of Hindustan Zinc Ltd. Vs. Union of India reported in 2015 (325) ELT A 155 (SC),U nion of India vs. Hindustan Zinc Ltd. reported in

2008 (225) ELT 183 (Raj.) & Union of India vs. Hindustan Zinc reported in 2014 (305) E.L.T. 123 (Raj.).

5. I have heard the ld. Counsel for both the sides and perused the records.

6. On perusal of the definition of inputs contained in both the erstwhile Central Excise Rules, 1944 and the Cenvat Credit Rules, 2002, it reveals that

though the definition is broad enough to take within its ambit, various materials for consideration as inputs, but in absence of use of particular goods

either directly or indirectly in the manufacture of the final product, the Cenvat benefit is not available to the assessee. The nature of use of cement in

this case shows that the same is neither used directly or indirectly in the manufacture of the final product and thus, the Cenvat credit is not available to

the appellant. The judgment of the Honâ??ble Supreme Court in the case of

Ramala Sahkari Chinni Mills Ltd. (supra) relied on by the ld. Advocate

is distinguishable from the facts of the present case inasmuch as in the said decided case, the issue involved was with regard to interpretation of the

phrase â??includesâ? and not in context with ascertaining the fact as to whether the goods are used in or in relation to manufacture of final product.

On the contrary, I find support from the judgment relied on by the Ld. D.R. for Revenue, wherein in the case of appellant itself, it has been held that

cement used for construction /repair or maintenance of mines not to be considered as input for the purpose of taking cenvat credit. Hence, Cenvat

credit on Cement in this case is not available to the appellant. However, since the issue relates to interpretation of the provisions of cenvat statute, I

am of the view that Section 11AC of the Central Excise Act, 1944 cannot be invoked, justifying imposition of penalty. Inasmuch as the said provision

has the applicability, in the eventuality, where the assessee is involved in the activities concerning fraud, collusion, wilful misstatement with intend to

evade payment of duty. Thus, in absence of those ingredients, the penalty confirmed in the impugned order is liable to be set aside. However,

considering the fact that in the case of the appellant itself, the Honâ??ble Supreme Court and the Honâ??ble Rajasthan High Court have held that

cement shall not be considered as input for manufacture of the final product, I upheld the impugned order passed by the Commissioner (Appeals) to

the extent of disallowance of modvat/cenvat credit on the disputed goods.

7. The appeals are disposed of in above terms.

[Dictated and Pronounced in the Open Court]

