

(2015) 10 SC CK 0014

In the Supreme Court Of India

Case No : Civil Appeal Nos. 3115 of 2007 with C.A. Nos. 3114 & 3116 of 2007

Madras Cements Ltd.

APPELLANT

Vs

Commissioner of C. Ex., Trichy

RESPONDENT

Date of Decision : 07-10-2015

Acts Referred:

Citation : (2015) 325 ELT 239

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri Mohan Parasaran, Senior Advocate, Nikhil Swami, Ms. Divya Swami, Ms. Prabha Swami and Ms. V. Gayathri, Advocates, for the Appellant; S/ Shri A.K. Panda, Senior Advocate, Ms. Sunita Rani Singh, Subhas C. Acharya, H.K. Naik and B. Krishna Prasad, Advocates, for the Respondent

Final Decision : Disposed Of

Judgement

1. We may point out at the outset that a batch of civil appeals was decided by this Court vide orders dated 27-7-2010 with leading case being Civil Appeal Nos. 7099-7100 of 2005 titled M/s. "M/s. Madras Cements Ltd. v. Commissioner of Central Excise, Chennai" [2010 (257) E.L.T. 321 (S.C.)]. In the said case, this Court held as under :-

"Insofar as the MODVAT/CENVAT credit on inputs (explosives, lubricating oils, etc.) is concerned, the issue is squarely covered by the decision of this Court in the case of Vikram Cement v. CCE reported in 2006 (194) E.L.T. 3. Therefore, the appeals, where credit on inputs is concerned, are allowed.

As regards the MODVAT/CENVAT credit on capital goods if the mines are captive mines so that they constitute one integrated unit together with the concerned cement factory, MODVAT/CENVAT credit on capital goods will be available to the assessee. On the other hand, if the mines are captive mines but they supply to various other cement companies of different assessees, and it is found that the said goods were being used in the lime stone mines outside the factory of the

assessee, MODVAT/CENVAT credit on capital goods used in such mines will not be available to the concerned assessee under the appropriate MODVAT/CENVAT Rules.

In order to get a clear finding on the issue, all the matters are remanded to the respective original authorities for decision only on the above issue."

2. There is no dispute and cannot be any dispute about the aforesaid legal position. In fact, this was the principle laid down by this Court earlier in the case of "Vikram Cement v. Commissioner of Central Excise, Indore" [2006 (194) E.L.T. 3 (S.C.)]. The only question therefore, which has to be considered in the present appeal is as to under which category the case of the appellant falls.

3. For this purpose, the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "CESTAT") has, by the impugned judgment [2006 (202) E.L.T. 106 (Tribunal)], remitted the case back to the Commissioner (Appeals) for fresh adjudication as can be discerned from the following portion of the said order :-

"12. The Supreme Court in Vikram Cement v. Commissioner of Central Excise, Indore reported in 2006 (194) E.L.T. 3 (S.C.) in paragraph 5 of the judgment, held that as regards MODVAT/CENVAT credit on capital goods used in mines which are captive mines so that they constitute one integrated unit together with the concerned cement factory. MODVAT/CENVAT credit on capital goods will be available to the assessee. On the other hand, if the mines are not captive mines but they supply to various other similar companies of different assessees, MODVAT/CENVAT credit on capital goods used in such mines will not be available to the concerned assessee under the appropriate MODVAT/CENVAT rules. The Supreme Court had remanded the matter to the respective original authorities for decision on the said issue. In the present case, the Commissioner (Appeals) has not given any finding on the stand taken by the assessee that the mining area was a part of the factory premises as per the ground plan and the Registration Certificate. If the mines from which the material is excavated and used for manufacturing the final product by the assessee is captive mine and a part of the factory premises as urged by the assessee and the capital goods are used in such captive mine, then obviously, the assessee would be entitled to MODVAT credit on such capital goods used in the captive mines which constitute one integrated unit together with the cement factory of the assessee."

4. Though the principle of law has rightly come from the judgment of this Court in Vikram Cement's case, the CESTAT has went further to remark that in the present case, the Commissioner (Appeals) has not given any findings on the stand taken by the assessee that the mining area was a part of the factory premises as per the ground plan and the registration certificate. It is further discerned that if the mines from which the material is excavated and is used for manufacturing the final product by the assessee is captive mine and a part of the factory premises and the capital goods are used in such captive mine, then the

assessee would be entitled to the MODVAT credit.

5. It is pointed out by Mr. Mohan Prasaran, learned senior counsel appearing for the appellant-assessee, that while making these comments, the CESTAT has erred inasmuch as even as in the show cause notice issued by the respondent-Department it was admitted that the goods are not in the nature of capital goods and these were used for construction of concrete structure and foundation on which the various heavy machineries in a cement plant was to be erected. On that basis, it is argued that the goods in question were captively used for the construction of the plant and had nothing to do with the mining which is accepted by the Department itself in the show cause notice.

6. After going through the show cause notice, we find that the aforesaid contention of the learned senior counsel for the assessee is correct. Accordingly, we are of the opinion that there was no need to remand the case back to the Commissioner (Appeals) as on admitted facts when the principle laid down in Vikram Cement's case is applied, the assessee was not liable to pay any duty. The order of the CESTAT remitting the case back to the Commissioner (Appeals) is thus, set aside allowing these appeals.