(2023) 10 CESTAT CK 0011

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 40850 Of 2015

M/S. The Ramco Cements Limited APPELLANT

Vs

Commissioner Of GST And Central Excise RESPONDENT

Date of Decision : 10-10-2023

Acts Referred:

Central Excise Rules, 2002 — Rule 19
Cenvat Credit Rules, 2001 — Rule 6(5)(ii)
Central Excise Act, 1944 — Section 2(za), 3(1)

Citation : (2023) 10 CESTAT CK 0011

Hon'ble Judges : Sulekha Beevi C.S., Member (J);Vasa Seshagiri Rao, Member (T)

Bench : Division Bench

Advocate : R. Parthasarathy, Harendra Singh Pal

Final Decision : Allowed

Judgement

Sulekha Beevi C.S., Member (J)

1. Brief facts are that the appellants are manufacturers of cement and are registered with the Central Excise Department. The appellants use clinkers for manufacture of cement. They use the clinker manufactured by them as well as duty paid purchased clinkers from their other units at Ariyalur, Aathiyur and Jayanthipuram. They were not maintaining separate records for manufacture of cement out of their own manufactured clinkers and duty paid purchased clinkers. The appellants were clearing their final product 'cement' to indigenous customers on payment of duty and also to the units situated in the Special Economic Zone (SEZ) without payment of duty.

1.2 The officers of the Internal Audit Party, during the course of audit of accounts noticed that for the period from August 2012 to October 2013, the appellant has cleared cement to various Special Economic Zone under Rule 30 of the SEZ Rules, 2006 without payment of Central Excise duty based on the Letters of Undertaking executed before the Jurisdictional Deputy / Assistant Commissioner of Central Excise.

1.3 The Department was of the opinion that the appellant is not eligible for exemption of duty on the clinker that is used captively in the production of cement vide Notification No. 67/1995-CE dated 16.03.1995 as amended for the reason that the final product viz., Cement cleared to the SEZ unit is an exempted product.

1.4 Show Cause Notices were issued proposing to demand the duty on the clinker used in the manufacture of cement cleared to SEZ unit. After due process of law, the original authority confirmed the demand along with interest and imposed penalty. Against such order, the appellant filed an appeal before the Commissioner (Appeals) who upheld the same. Hence, this appeal.

2. The Ld. Consultant Shri R. Parthasarathy appeared and argued for the appellant. It is submitted by the Ld. Consultant that the issue has been settled in the appellant's own case as per Final Order Nos. 40936-40957/2015 02.07.2015 as well as in another case vide Final Order No. 43174/2017 dated 18.12.2017.

3. The Ld. Authorised Representative Shri Harendra Singh Pal appeared for Department and supported the findings in the impugned order.

4. Heard both sides.

5.1 The issue is whether the appellant is eligible for exemption from payment of duty on the intermediate product (clinker) under Notification No. 67/1995-CE dated 16.03.1995 when the final product (cement) is cleared to Special Economic Zone (SEZ) without payment of duty. The said issue was considered by the Tribunal in a batch of cases including the case of the appellant vide Final Order No. 40936-40957/2015 dated 02.07.2015. The relevant paragraph reads as under:-

"26. In this regard, it is pertinent to state that if the Revenues contention is to be taken that the goods cleared to the SEZ units are exempted, then the question of following the procedures stipulated under SEZ Act and under Rule 19 of Central Excise Rules 2002 does not arise. On a perusal of the records, we find that the appellants have cleared the goods to SEZ ?under-bond? by following the ARE-1 procedures prescribed under Rule 19 of the Cenvat Credit Rules. Rule 19 of Central Excise Rules, 2002 is reproduced as under:

RULE 19.Export without payment of duty. (1) Any excisable goods may be exported without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, as may be approved by the [Principal Commissioner or Commissioner, as the case may be.

Any material may be removed without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, for use in the manufacture or processing of goods which are exported, as may be approved by the Principal Commissioner or Commissioner, as the case may be.

(3) The export under sub-rule (1) or sub-rule (2) shall be subject to such conditions, safeguards and procedure as may be specified by notification by the Board.

There is no dispute that the appellants had duly followed the procedures set out in the above Rules, and executed bond before the excise authorities and cleared the goods without payment of duty. If the goods are fully exempted, the question of following the procedure under ARE-1 and execution of bond does not arise.

Accordingly, we hold that the cement cleared to SEZ unit/developers are not exempted goods but cleared without payment of duty by following the procedures and conditions stipulated in both SEZ and Rule 19 of CER Rules and the clinkers used captively for manufacture of cement cleared to SEZ is covered under Notification 67/95 from exemption of excise duty.

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32. As regards the last issue, the Revenue contended that the clause (i) of proviso to Notification No. 67/95 provides exception only for clearance to FTZ and not for SEZ. It is contended that the very purpose of the non-inclusion of SEZ in Notification No.67/95 is to make it apply only to FTZ and not to SEZ. We are unable to accept department?s view for the reasons that during the relevant period under dispute there were no FTZ in operation and if the Revenues view is to be taken, no clearance would be made to FTZ after the enactment of SEZ Act with effect from 10.02.2006. Once the SEZ Act came into effect from 10.02.2006 all the units functioning as FTZ were declared as SEZ units. We find that the Notification No.4/2003-CE, dated 30.03.2003 was issued to convert various FTZs into SEZs.

33. Further as per the Notes Explaining Clauses of the Finance Bill, 2007 clause 106, after enactment of SEZ Act FTZs have become redundant and hence it seeks to amend sub-section (1) of Section 3 of the Central Excise Act. The Relevant clause is reproduced as under:-

Clause 106 seeks to amend sub-section (1) of section 3 of the Central Excise Act, 1944 with a view to omit the provisions relating to free trade zonewhich have become redundant due to enactment of the Special Economic Zones Act, 2005. It is also proposed to amend clause (iii) of Explanation 2 of said sub-section so as to substitute the meaning of Special Economic Zonein the manner as is assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005.

By virtue of the above Act, the word “FTZ” was omitted and substituted with the word “SEZ”. Therefore, the Revenue?s plea that the goods supplied to SEZ is not covered under clause (i) of the Proviso to the notification is not acceptable. We find that when the Board already amended the Rule 6 (5) (ii) of Cenvat Credit

Rules, 2001 to include supplies to SEZ, the clause (i) of the proviso to Notification No.67/95 should also been amended accordingly to replace the word FTZ to SEZ. Therefore, we are unable to accept the dept. plea that clause (i) of proviso to the notification No.67/95 is intentionally kept and meant only to FTZ and not SEZ and we hold that the appellants are eligible for the exemption under Notification No.67/95.

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35. In view of foregoing discussions, we hold that the appellants are eligible for exemption under Notification 67/95-CE on clinker captively consumed for manufacture of cement cleared to SEZ units/developers without payment of duty for both the periods prior to and after the amendment of SEZ Act. Accordingly, the impugned orders in all the assessees? appeals are set aside and the appeals allowed. The Revenue appeals are rejected and the impugned orders are upheld. Consequently, connected miscellaneous applications are disposed of. All appeals are disposed of in the above terms."

5.2 In the case of Madras Cements Ltd. vide Final Order No. 43174/2017 dated 18.12.2017, the Tribunal has applied the said decision to set aside the demand.

6. Following the decisions above, we find that the demand cannot sustain. The impugned order is set aside. The appeal is allowed with consequential reliefs, if any.

