(2009) 06 MAD CK 0292

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 1396 of 2009

The Commissioner of Central Excise — APPELLANT

Vs

The India Cements Ltd. and Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench — RESPONDENT

Date of Decision : 24-06-2009

Acts Referred:
Central Excise Rules, 1944 — Rule 57Q

Citation : (2009) 06 MAD CK 0292

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : K. Ravi Chandrababu, for the Appellant;

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—This appeal is filed against the Final Order No. 1501 of 2005 passed by the second respondent dated 25.11.2005 by formulating the following questions of law :

1. Whether the explosives used in the mines to extract lime stones for the purpose of manufacturing cement could be termed as inputs to avail Cenvat credit especially when such goods are not used within the premises of the factory or to the final product as contemplated under Rule 57Q of the Central Excise Rules?

2. Whether the CESTAT, South Zonal Bench, Chennai, is correct in allowing the credit of Rs. 46,882/- being the credit availed by the assessee during July 2002 and October 2002 under Cenvat Credit Rules, 2002 on inputs, namely ''explosives'' received by the assessee during the period December 1997 and March 2000, when the explosives were used in their mines and not within their factory premises?

2. The only objection of the department is that the CENVAT credit is not available to the assessee as the inputs were used outside the premises of the factory.

3. Whether the CENVAT is available to the assessee even when the inputs are used outside the factory premises with reference to Rule 57-Q of the Central Excise Rules was originally considered by the Supreme Court in the case of M/s. Jaypee Rewa Cement Vs. Commissioner of Central Excise, M.P., in favour of the assessee, wherein also it was held that the input even used outside the factory premises, the assessee was entitled to Modvat credit. However, the Supreme Court in the case of Commissioner of Central Excise, Jaipur Vs. J.K. Udaipur Udyog Ltd., held that the decision in the case of Jaypee Rewa Cement, referred to supra, would not apply to the CENVAT Rules. That view was doubted in the case of Vikram Cement v. Commissioner of Central Excise, Civil Appeal No. 1197 of 2005, by a co-ordinate Bench and the issue was referred to the larger Bench by framing a question thus:

In the light of the provisions of the CENVAT scheme vis-a-vis Modvat scheme, we are of the view that the observations made in paragraph 9 of the decision of the Division Bench, in the case of Commissioner of Central Excise, Jaipur Vs. J.K. Udaipur Udyog Ltd., , needs reconsideration.

4. On the reference, the three Judge Bench of the Supreme Court in the case of Vikram Cement Vs. Commnr. of Central Excise, Indore, , held that the doubt expressed by the referring Bench about the correctness of the decision in CCE v. J.K. Udaipur Udyog Ltd. referred to supra, was well founded. Having regard to the fact that the CENVAT Rules in effect substitute the modvat rule, the decision in Jaypee Rewa Cement would continue to apply. The decision in Commissioner of Central Excise, Jaipur v. J.K. Udaipur Udyog Limited, referred to supra, holding to the contrary was not good law.

5. Thus, the earlier decision of the Supreme Court in the case of Jaypee Rewa Cement has been approved by the larger Bench. As a matter of fact, in this case, the Tribunal has held in favour of the assessee only by following the Jaypee Rewa Cement''s case, which decision is, found to be, well founded. The questions of law now raised, which are extracted above, have virtually been decided by the Supreme Court in the case of Vikram Cement v. Commissioner of Central Excise 2006 (194) ELT 3. The appeal is dismissed in the light of that decision. No costs.