

SUPREME COURT OF INDIA

Madras Cements Ltd.

Vs.

Commr.of Central Excise

C.A.No.2037 of 2006

(Altamas Kabir and Cyriac Joseph JJ.)

06.05.2010

JUDGEMENT

Altamas Kabir, J.

1. The short point involved in these appeals is whether the Appellant/Assessee is eligible for Modvat Credit on certain goods for the period comprising November and December, 1999.

2. The Appellant, M/s Madras Cements Ltd., Alathiyur, hereinafter referred to as 'the Assessee' is the holder of Central Excise Registration No.1/Cement/97 and is engaged in the manufacture of cement and clinker coming within the ambit of Chapter 25 of the Central Excise Tariff Act, 1985, hereinafter referred to as 'CETA, 1985'.

3. The Revenue's contention is that for the months of November and December, 1999, the Assessee had taken Modvat Credit on ineligible capital goods amounting to Rs.8,42,843/-. The further contention of the Revenue is that the Assessee was not entitled to such credit, inasmuch as, it had taken Modvat Credit on items which did not come within the purview of capital goods under Rule 57Q of the Central Excise Rules, 1944, although it was claimed by the Assessee that the said items comprised components, spares and accessories within the meaning of Explanation 1(d) of Rule 57Q(1) relating to capital goods. Accordingly, on 31st March, 2000, the Assessee was issued show cause notice no.11 of 2000 asking it to show cause as to why the amount of Modvat Credit of Rs.8,42,843/- should not be disallowed and recovered under Rule 57U(3) of the Central Excise Rules, 1944, and why interest at the rate of 20% per annum should not be demanded under Rule 57U thereof, if the Modvat Credit wrongly availed was not paid within three months from the date of receipt of the demand notice. The Assessee was also asked to show cause as to why a penalty should not be imposed under Rule 173Q(b)(b) of the aforesaid Rules.

4. Replying to the said show cause notice, the Assessee asserted that the inputs used in or in relation to the manufacture of the final products were eligible for Modvat Credit and that the ground plan had been enclosed with the application for grant of registration certificate

indicating that the mines were also situated in the factory complex and were an integral part of the factory. The Assessee contended that parts of the Bucket Elevator (8434.00) and Wagon Loaders (8431.00) were parts of machinery mentioned under serial nos.1 to 4 of the Table under Rule 57Q(1) and were eligible for Modvat Credit as per the Board's Circular No.276/110/96 TRU.

5. The show cause notice was adjudicated by the Assistant Commissioner of Excise on 4th June, 2003, and by his order No.22 of 2003, the Assistant Commissioner disallowed Modvat Credit amounting to Rs.4,31,749/- with regard to some of the items.

“The Assistant Commissioner held that, inasmuch as, the mandatory requirement stipulated in serial no.5 of the Table to Rule 57Q had not been complied with, he was not inclined to allow Modvat Credit in respect of the goods listed in serial nos.32 to 43 of the annexure to the notice. An appeal preferred before the Commissioner (Appeals) against the order of the Assistant Commissioner was rejected on 16th October, 2003, upon holding that the items in question were not capital goods and were not, therefore, entitled to Modvat Credit admissible under Rule 57A as well. The Commissioner (Appeals) held that the credit was not admissible on the goods listed under serial nos.32 to 43 of the show cause notice.”

6. The matter was then taken in appeal before the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, by way of Appeal No.E/108/04/MAS on 20th January, 2004, which upheld the order of the Commissioner (Appeals). Aggrieved by the order of CESTAT, the Appellant filed the present Appeals before this Court.

7. Appearing for the Appellant/Assessee, Mr. A.K. Ganguli, learned Senior Advocate, submitted that the case of the Assessee was squarely covered by the decision of this Court in *Jaypee Rewa Cement vs. Commissioner of Central Excise*¹, wherein explosives used for the extraction of limestone for manufacture of cement were held to fall under Chapter 36 of the Schedule to CETA, 1985, and while cement comes under Chapter 25 and is a final product, explosives fall under Column 2 and that the Assessee therein would be entitled to claim credit on the duty paid on explosives as they were used for the manufacture of the intermediate produce, namely, limestone which, in turn, was used in the manufacture of cement.

8. Mr. Ganguli also submitted that the issues in the instant case stood settled by the larger Bench in *Vikram Cement vs. Commissioner of Central Excise, Indore*² to which the correctness of the decision in the case of *Commissioner of Central Excise vs. J.K. Udaipur Udyog Ltd.*³ had been referred.

“The Three-Judge Bench went on to hold that the Schemes of the Modvat and Cenvat were not different and that the conclusion of the Court in the J.K. Udaipur Udyog Ltd.'s case (supra) that the decision in Jaypee Rewa Cement's case (supra) would have no application to the case was not accepted on the ground that the Cenvat Rules only

reflected the Modvat Rules where the Rules had simply been re-arranged. Mr. Ganguli submitted that, inasmuch as, the items sought to be excluded by the Assistant Commissioner were components and accessories used in the mining process for manufacture of the final product, and were covered by Sub-heading No.84.31 to the Table annexed to Rule 57Q after its substitution by Notification No.6/97-CE(NT) dated 1.3.1997, as subsequently corrected on 1.3.1997, 10.3.1997 and 9.4.1997, the Assessee would be entitled to the benefits of Rule 57Q of the Central Excise Rules, 1944 and the impugned orders of the Revenue as well of the High Court were liable to be quashed.”

9. On behalf of the Respondent, Commissioner of Central Excise, it was submitted by learned Additional Solicitor General, Mr. Gaurav Banerjee, that although the Assessee had claimed the benefit of the entry at serial No.5 of the Table annexed to Rule 57Q(1) in respect of the capital goods mentioned at serial nos.32 to 43, it had failed to specify the tariff heading under which their machinery/equipment, of which the subject capital goods were claimed to be accessories were classifiable, nor could they even disclose the identity of such machinery and equipment to the authorities. Mr. Banerjee also submitted that at no stage of the proceedings before the Tribunal or the High Court was any attempt made by the Assessee to identify the machinery in the absence whereof they would not be eligible for Modvat Credit. It was urged that as had been held in the decision of this Court in *Vikram Cement vs. Commissioner of Central Excise, Indore*⁴ in order to be eligible for Cenvat Credit on capital goods under the Cenvat Credit Rules, 2001 and 2002, which requires, inter alia, that such goods must be used in the factory for the manufacture of the final product. Accordingly, an item not satisfying the said condition could not be brought within the scope of "capital goods" by any interpretive process, whereby claim for Cenvat Credit on the capital goods in question could be entertained. Mr. Banerjee submitted that since the said decision, as also the decision in the case of J.K. Udaipur Udyog Ltd.'s case (supra), were available at the relevant time, the impugned decision arrived at by the High Court could not be assailed on account of the subsequent decision of the Constitution Bench on the reference made with regard to the views expressed in J.K. Udaipur Udyog Ltd.'s case (supra).

10. Mr. Banerjee urged that the impugned judgment of the Tribunal ought not, therefore, to be interfered with and the appeals of Madras Cements Ltd. were liable to be dismissed.

11. As indicated initially, the short point involved in these appeals relates to the eligibility of the Assessee for Modvat Credit on certain capital goods which were said to have been used as components, spares and accessories in the manufacturing process of the Appellant for the period in question.

12. In order to avail of Modvat/Cenvat credit, an Assessee has to satisfy the Assessing Authorities that the capital goods in the form of component, spares and accessories had been utilized during the process of manufacture of the finished product.

13. Admittedly, in this case the Appellant was not able to identify the machinery for which the goods in question had been used. In the absence of such identification, it was not possible for the Assessing Authorities to come to a decision as to whether Modvat Credit would be given in respect of the goods in question. There is no difficulty with regard to the decisions rendered in Jaypee Rewa Cement's case (supra) or the Constitution Bench judgment in Vikram Cement's case (supra). The question is whether the Assessee was able to specify to the Assessing Authorities that the goods in question had been used as components, spares and accessories for the manufacture of the finished product. The same holds good in respect of Mr. Ganguli's assertion that the goods in question were included under paragraph 84.31 of the Table set out in Rule 57Q of the Central Excise Rules, 1944.

14. We are not, therefore, inclined to interfere with the orders of the Tribunal and the Appeals are accordingly, dismissed.

15. There will be no orders as to costs.

¹(2001) 8 SCC 586

²(2006) 2 SCC 351

³(2004) 7 SCC 344

⁴(2005) 7 SCC 74