CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/1322/2004-SM

[Arising out of Order-in-Appeal No. 364/2004-CE dated 01/09/2004 passed by Commissioner of Central Excise (Appeals), Mangalore.]

Associated Cement Companies Ltd
Wadi Cement Works, PO Wadi Gulbarga Dist.
GULBARGA - 585225
KARNATAKA

Appellant(s)

Versus

Commissioner of Central Excise,
Customs and Service Tax Belgaum
NO. 71, CLUB ROAD,
CENTRAL EXCISE BUILDING,
BELGAUM, - 590001
KARNATAKA

Respondent(s)

Appearance:

Mr. Abhishek Anand, Advocate
ECONOMIC LAWS PRACTICE
801A, 8th Floor, Konnactus Tower,
Bhavbhuti Marg,
Opp. Ajmeri Gate New Delhi Rly. Station
New Delhi – 110 001.

For the Appellant

Mr. Pakshirajan, AR

For the Respondent

Date of Hearing: 25/04/2018
Date of Decision: 25/04/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20688 / 2018

Per : S.S GARG

The present appeal is directed against the impugned order dated 31.8.2004 passed by the Commissioner (A) whereby the Commissioner (A) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellants are engaged in the manufacture of clinker and cement falling under Chapter 25 and are availing the CENVAT credit on inputs and capital goods. During the period from March 2003 to December 2003, the appellants have availed credit of Rs.10,25,816/- on explosives; Rs.33,123/- on lubricants; Rs.83,833/- on capital goods and spares exclusively used in mines. A show-cause notice was issued and the adjudicating authority vide the Order-in-Original disallowed credit of Rs.10,25,816/- and Rs.83,833/-. Aggrieved by the said order, appellant filed appeal before the Commissioner (A), who rejected the appeal and hence, the present appeal.

3. Heard both the parties and perused the records.

4. Learned counsel for the appellant submitted that the issue involved in the present case is whether the credit availed on inputs viz., lubricants and explosives and capital goods/spares used in the mines can be allowed or not. Learned counsel submitted that this issue is no more *res integra* and has been settled by various decisions of the Tribunal, High Court and Supreme Court. In support of this submission, he relied upon the following decisions:

- *Japee Rewa Cement vs. CCE, MP: 2011 (133) ELT 3 (SC)*
- *Vikram Cement vs. CCE, Indore: 2006 (194) ELT 3 (SC)*
- *Vikram Cement vs. CCE, Indore: 2006 (197) ELT 145 (SC)*
- *Madras Cements Ltd. vs. CCE, Chennai: 2010 (257) ELT 321 (SC)*
- *Madras Cements Ltd. vs. CCE, Trichy: 2015 (325) ELT 239 (SC)*
- *CCE, Raipur vs. Century Cements: 2013 (290) ELT 348 (Chh.)*

5. On the other hand, the learned AR reiterated the impugned order.

6. After considering the submissions of both the parties, I find that the Hon'ble Supreme Court in the case of *Vikram Cement vs. CCE, Indore* (supra) has held in para 4 and 5 as under:

> *"4. In so far as the Modvat/Cenvat credit on inputs (explosives, lubricating oils etc.) is concerned, the matter 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.*
>
> *5. 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 not captive mines but they supply to various other cement 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 matters are remanded to the respective original authorities for decision only on the above issue".

In the present case, it is not in dispute that the mines are captive mines.

7. In view of the various decisions cited supra, I am of the considered view that the issue is squarely covered in favour of the appellant by the decisions cited supra. By following the ratio of the said decisions, I set aside the impugned order by allowing the appeal of the appellant with consequential relief, if any.

(Operative portion of the Order was pronounced
in Open Court on **25/04/2018**)

S.S GARG
JUDICIAL MEMBER

rv...