CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>BANGALORE</u>

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 458 of 2009

[Arising out of No. 106-2009 dated 20/03/2009 passed by CCE(Appeals), Mangalore]

VASAVADATTA CEMENTS
KESORAM INDUSTRIES LTD,SEDAM
DISTRICT, GULBARGA KARNATAKA

Appellant(s)

VERSUS

C.C.,C.E.& S.T-BELGAUM
NO. 71...CLUB ROAD,
CENTRAL EXCISE BUILDING,
BELGAUM,
KARNATAKA
590001

Respondent(s)

<u>Appearance:</u>

Shri Sridhar, Consultant
R.G. UTAGIKAR
162/19 A, RAILWAY LINES,
JAWAHIR APARTMENT, NEAR SHANTI SAGAR
MANGAL KARYALAYA,
SOLAPUR
MH
413001

For the Appellant

Shri Rama Holla, Superintendent(AR)

For the Respondent

CORAM: HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Date of Hearing: 27/11/2019
Date of Decision:11/02/2020

<u>Final Order No. 20103 /2020</u>

Per : S.S GARG

The present appeal is directed against the impugned order dt. 20/03/2009 passed by the Commissioner(Appeals) wherein the Commissioner(Appeals) has allowed the appeal filed by the Revenue and set aside the Order-in-Original granting refund of Rs.3,20,821/- to 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. They cleared 6374 MT of cement on payment of duty @ Rs.400 per MT(PMT) whereas the duty payable was Rs.350 PMT. The rates of duties on cement were changed from 01/03/2007 under Notification No.4/2007 dt. 01/03/2007 and the duty @ Rs.350 PMT was levied on the cement having Retail Sale Price (RSP) less than Rs.190 PMT and for the value exceeding Rs.190 PMT, the rate fixed was Rs.600 PMT. In addition, the rate of Rs.400 PMT was also prescribed under the said Notification where the RSP is not required to be marked on the bags. The appellant supplied the cement to Government bodies for the price less than Rs.190 PMT and issued the invoices for the removal of cement during the period March and April, 2007 by showing the rate of duty of Rs.350 PMT as the price was less than Rs.190 PMT. Since there was a confusion during the relevant period regarding the rate applicable to categories such as Government supplies, industrial supply etc. and therefore the appellant while discharging the duty liability under Rule 8 calculated the duty @ Rs.400 PMT and paid at the same rate even though in the invoices the rate was shown as Rs.350 PMT. Thereafter the appellant filed refund claim of excess duty of Rs.3,28,082/-which was granted by the Assistant Commissioner vide Order-in-Original dt. 28/09/2007. The Department reviewed the order and filed appeal before the Commissioner(Appeals) who accepted the appeal and set aside the Order-in-Original. Hence the present appeal.

3. Heard both the sides and perused the records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without appreciating the facts and the law and binding judicial precedent. He further submitted that appellant was required to pay

the duty @ Rs.350 PMT as per the Notification No.4/2007. He also submitted that since there was a confusion during the relevant time, they paid the duty @ Rs.400 PMT and subsequently filed refund claim which was sanctioned by the Assistant Commissioner after examining the whole facts. He further submitted that sl.No.2 of Explanation appended to this Notification has defined 'the retails sale price in detail. In the proviso to this explanation, it is mentioned that 'provided also that where the retail sale price of the goods are not required to be declared under the Standards of Weights & Measures (Packaged Commodities) rules, 1997 and thus not declared, the duty shall be determined as is in the case of goods cleared in other than packaged form". He further submitted that in the present case, the supply was to the State Government undertaking and the rate per bag was less than Rs.190 and the RSP was declared on such bags. He further submitted that this issue has been considered by the Division Bench of the Tribunal in the case of CCE, Hyderabad-III Vs. Sagar Cements Ltd. [2010(256) ELT 616 (Tri. Bang.)] and the Tribunal held that the assessee was entitled to the exemption under Sl.No.1 or 1A of Notification No.4/2007-CE.

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

6.1. After considering the submissions of both the sides and perusal of the material on record, we find that in the present case, the appellant has supplied the cement to Government bodies i.e. M/s. AP Housing Corporation, Hyderabad. Further we find that as per the Notification No.4/2007 which prescribes the rates of duty, the appellant's case falls under Sl.No.1A which prescribes the rate of duty @ Rs.350 PMT. The relevant entry in the said notification is reproduced herein below:-

Sl. No.	Chapter Heading	Description	Rate Rs./MT
1.	……	…..	
1A.	252329	All goods, whether or not manufactured in Mini Cement Plant not covered in sl.No.1 and cleared in packaged form of retail sale price not exceeding Rs.190/- per 50 bags of per MT equivalent retails price not exceeding Rs.3800/-	Rs.350/-
1B	…..	…………	
1C	252329	All goods, whether or not manufactured in Mini Cement Plant, not covered in sl.No.1(B), other than those cleared in packaged form	Rs.400/-

Further we find that Notification No.4/2007 has prescribed different rates for different categories. Sl.No.1(A) prescribed the rate of Rs.350/- PMT whereas the sl.No.1(C) prescribed the rate of Rs.400 PMT. If the conditions laid down under a particular Sl.No. is satisfied, the manufacturer is allowed to manufacture goods prescribed against the said sl.no. Further we find that in this case, the goods were in packaged form being marked with the RSP and the price being less than Rs.190 / bag even though the supply was to the Government undertaking and hence the rate applicable is only Rs.350 PMT and not Rs.400 PMT at which the appellant has paid the duty. Further we find that the original authority has allowed the refund claim after verifying the full facts whereas the Commissioner(Appeals) has not properly interpreted the provisions of Notification to deny the refund to the appellant. further we find that this issue is squarely covered in favour of the appellant by the decision of this Tribunal in the case of Sagar Cements Ltd. cited supra wherein the Tribunal in para has held as under:-

7.It can be seen from the above reproduced portion that it is not in *dispute that the respondents indicated retail sale price on the bags. It is also seen that the requirement of not printing of the retail sale price is not applicable to the respondents, as the goods are sold to APSHCL by indicating the price at which it was contracted on each bag. It is also on record that there was no case of the Revenue that the respondents were not required to declare the retail sale price on the supplied bags. We concur with the views taken by the learned Commissioner (Appeals) that the cement bags manufactured by the respondents herein were not out of the purview of SWMP Rules, as they were required to declare the RSP on the product. This our view is fortified from the fact that the authorities under the Standards of Weights and Measures Act., i.e., the Controller, Legal Metrology, Government of Andhra Pradesh had informed all the respondents herein regarding mandatory declaration of retail sale price on the bags of cement supplied to APSHCL. Accordingly, in view of the above reasoning and findings, we hold that the impugned orders are correct, legal and do not suffer from any infirmity. The appeals filed by the revenue are devoid of merits and are rejected.*

7. By following the ratio of the above said decision, we are of the considered view that the impugned order is not sustainable in law and therefore the same is set aside by allowing the appeal of the appellant.

(Order was pronounced
in Open Court on **11/02/2020**)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

Raja...