IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

E/CO/24/2010 and E/92/2010

(Arising out of Order-in-Appeal No. 412/2009 dated 27.11.2009 passed by the Commissioner of Central Excise (Appeals), Madurai)

Commissioner of Central Excise, Tirunelveli Appellant

Vs.

M/s. The India Cements Ltd. Respondent

Appearance

Shri A. Cletus, Addl. Commissioner (AR) for the Appellant
Shri S. Muthuvenkataraman, Advocate for the Respondent

CORAM

Hon?ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon?ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing : 07.03.2018
Date of Pronouncement: 12.03.2018

Final Order No. 40589 / 2018

Per Bench

Brief facts are that the respondents are engaged in manufacture of cement and are registered with the Central Excise Department. They availed credit in respect of capital goods used in the mines which are located outside the factory for the period March 2006 to October 2007. Show cause notice was issued proposing to recover the credit alleging that they are not eligible for the credit. After due process of law, the original authority confirmed the demand, interest and imposed equal penalty. In appeal, Commissioner (Appeals) set aside the demand, interest and penalties. Aggrieved, the department is now before the Tribunal.

2. On behalf of the department, ld. AR Shri A. Cletus submitted that the Commissioner (Appeals) has erred in distinguishing the decision made in the case of Vikram Cement reported in 2008 (197) ELT 145 (SC). That the Apex Court in the case of Vikram Cement (supra) had held that credit is not admissible on capital goods, if the mines are not captive mines. In order to be eligible for credit of capital goods installed in the mines, such mines should be captive mines so as to constitute one integral unit together with the concerned cement factory. They should not be supplying limestone to other cement factories. In the present case, the respondents have been supplying inferior quality limestone excavated from the mines to others, so the said mines cannot be said to be captive mines of the respondent. Therefore, the credit is not admissible.

3. The ld. Counsel Shri S. Muthuvenkataraman appeared on behalf of the respondent and argued the matter. He submitted that the adjudicating authority had confirmed the demand wrongly relying upon the judgment of Vikram Cement (supra). In para 15 of the Order-in-Original, the adjudicating authority has stated that the inferior quality limestone thus generated during excavation and unfit for consumption in production of cement is sold by the respondent in the open market to non-cement manufacturers. Thus, it is clear that the respondent is not selling the limestone to other cement factories. For the very same reason, the mines are captive mines and the Commissioner (Appeals) has rightly analysed the said fact to hold the issue in favour of the respondent. The respondent has obtained permission vide GO 393 dated 10.3.1988 permitting them to dispose of the inferior quality limestone to nearby industries. Since the inferior quality limestone may not be of use in the manufacture of cement, the respondent has thus disposed of the waste / rejected limestone to non-cement manufacturers. The Tribunal in the respondent?s own case reported in 2013 (295) ELT 713 has considered the very same issue and held that the respondents have disposed the waste / inferior quality limestone in accordance with the permission granted by the Government of Tamil Nadu and would be eligible for credit.

4. Heard both sides.

5. The ld. AR appearing for the Revenue has argued that the mines cannot be considered as captive mines for the reason that the respondents have been clearing the waste and inferior quality limestone from the captive mines to others. He argued that respondents sold the waste outside for its commercial exploitation and thus the mines do not become captive mines. He has argued that the waste should be stacked in the mines itself and selling of the waste outside would cease the mines to be captive mines. We cannot find any merit in this argument put forward by the ld. AR. The waste in the mines has to be disposed for further excavation and convenience. Further, the respondent has obtained permission from Government of Tamil Nadu to dispose of the waste / inferior quality limestone to nearby industries. Such a disposal of waste will not make the mines non-captive mines. The Commissioner (Appeals) has rightly observed in para 10 of the order that the inferior quality limestone which is not fit for use in the manufacture of cement is sold to other manufacturers who are not engaged in manufacture of cement and is used for white washing. The respondent having sold only limestone which is not fit for use in the manufacture of cement to other non-cement manufacturers, as recorded in para 15 of the Order-in-Original, we are of the view that the decision of the Apex Court in the case of Vikram Cement (supra) is not applicable. The appeal filed by the department is devoid of merits and the same is dismissed. The cross-objection filed by the assessee is disposed.

(Pronounced in open court on 12.3.2018)

(Madhu Mohan Damodhar)	(Sulekha Beevi C.S.)
Member (Technical)	Member (Judicial)

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