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

Appeal Nos.E/782/2007 & E/298/2008

[Arising out of Order-in-Appeal No.67/2007-CE dt. 30.8.2007 and OIA No.60/2008-C.Ex. dt. 15.4.2008 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore]

ACC Ltd. Appellant

Versus

Commissioner of Central Excise, Coimbatore Respondent

Appearance:

Shri B.Sri Ram, Consultant
For the Appellant

Shri S.Nagalingam, AC (AR)
For the Respondent

CORAM :

Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Madhu Mohan Damodhar, Technical Member

Date of hearing / decision : 03.03.2017

FINAL ORDER No. 40402-40403/2017

Per D.N. Panda

Hearing the arguments of both sides and their contentions from time to time and also examining the show cause notices, adjudication orders and Order-in-Appeals, it throws light that none of the authorities have focused on the allegations made in the SCN. The allegations in the SCN are :-

(i) Appellant cleared Flotation Rejects.

(ii) Flotation Rejects was alleged to fall under CETH 6807.90.

(iii) There was no payment of duty on the flotation rejects.

(iv) For non-payment of duty, there was violation of the law.

(v) The flotation rejects are outcome of the manufacture of cement.

(vi) There was availment of cenvat credit on the input 'Rosin'.

2. The crux of the issue is whether the 'flotation rejects' were manufactured by appellant and such goods were meant for limestone beneficiation to make use thereof for ultimate production of cement. Further, such rejects are intermediary and excisable goods and marketable. Without addressing such issue, the Authority proceeded unmindfully. Therefore it has become the necessity that the show cause notice needs readjudication to determine the above issue. The adjudicating authority is therefore directed to examine the following:

(i) whether the appellant had manufactured flotation rejects and whether it was intermediate goods?

(ii) whether flotation rejects are the outcome of any manufacturing process ?

(iii) whether flotation rejects are as such recognized as excisable goods under Central Excise Tariff Act, 1985 and marketable in common parlance?

Only after extensive enquiry and examination of the process of manufacture as well as evidence, the authority can reach to proper

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conclusion. Appellant is entitled to the course of natural Justice in the process of readjudication. The Authority recording defence plea and evidence shall pass appropriate reasoned and speaking order.

In the result, appeals remanded to the Adjudicating Authority.

(Dictated and pronounced in open court)

07.03.2017

(Madhu Mohan Damodhar)
Technical Member

6/3/2017

(D.N. Panda)
Judicial Member

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Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy

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