

GRAM : CEGCANAL

REGISTERED/A.D.

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

ET/1804/2000 - NB (SM)

BENCH NB (SM)

Appeal No.

Dated : 3/1/2001

CEGAT

NEW DELHI

To,

M/s Acc Cement Cos. Ltd.,

Jamul Cement works, P.O. Jamul cement,

Works, Distt. Durg-490024 (M.P)

In the matter of :

M/s Acc cement Co. Ltd.,

Appellant

vs.

CCE Bhopal

Respondent

Stay order No. S/01/2001/NB(SM)

I am directed to transmit herewith a certified copy of Final Order No. A/02/2001/NB(SM)

Dated : 01-01-2001 passed by the Tribunal under Section 35-C(1) of Central Excise & Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to :

Asstt. Registrar

NB(SM)

1. CCE Bhopal
2. CCE/CE/(Appeal) Bhopal
3. Chief Commissioner of Central Excise/Customs. Jaipur
4. Adv./Consult. Shri R. C. Pandey, Adv.
40 Appellants
5. S.D.R
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
9. Director (Review), C.B.E.C. North Block, New Delhi
10. Guard File.
11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
12. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, opp. Sachdeva P.T. College of Defence Colony, New Delhi-110003
13. M/s Lex Site Com. Ltd., Mumbai
14. Office Copy
15. M/s Cen-cis publication.

Asstt. Registrar

Northern Bench (Single Member)

E/Stay/1804/2000 in
E/3211/2000

(Arising out of Order-in-Appeal Nos.840 to 842-CE/BPL/2000 dt.28/31.7.2000 passed by the Commissioner (Appeals) of Customs & Central Excise, Bhopal)

M/s. ACC Cement Cos. Ltd.

Appellant
(Rep. by Shri R.C.Pandey, Adv.)

VS

CCE, Bhopal

Respondent
(Rep. by Shri M.D.Singh, SDR)

Coram : Shri G.R.Sharma, Member Technical

Per G.R.Sharma:

FINAL ORDER NO. A/02/2001/NB (S/M)
STAY ORDER NO. S/01/2001/NB (S/M)

This is an appeal filed by the appellant against denial of Modvat credit on explosives used in the mines from where lime stone is produced for use in the factory.

2. The facts of the case in brief are that the appellant is a cement factory, For manufacture of cement lime stone is one of the raw-materials. Lime stone is procured ^{by} in the mines, ^{For} ~~for~~ breaking the rocks containing lime stone explosives are used. The appellant submitted that explosives are inputs and therefore, they should be allowed the benefit of Modvat credit on explosives. The authorities below denied them the benefit and hence the appeal before me.

3. Arguing the case for the appellant Shri R.C.Pandey, Ld. Counsel in his usual fairness submits that the issue has been decided against the appellant by the Larger Bench of this Tribunal in the case reported in 2000(38)RLT.1111, He submits that his only contention ^{is that} ~~in~~ an appeal against this order of the Larger Bench of this Tribunal has been admitted in the Supreme Court. He, therefore, submits that since appeal has been admitted, the case may be decided taking that aspect in view.

(13)

4. Shri M.D.Singh, Ld. DR for Revenue submits that since the matter has been decided by the Larger Bench of this Tribunal against the assessee and since the order of the Larger Bench has not been stayed by Supreme Court, admission of appeal against the order does not make that order of the Larger Bench of this Tribunal in-operative. He, therefore, submits that the appeal may be rejected.

5. I have heard the rival submissions. I note that the issue has been decided by the Larger Bench against the assee. I agree with the pleas of the Ld. DR that admission of appeal in Supreme Court does not make ^{the} an order that appeal ^{is} ~~leaves~~ ^{is} in-operative. Following the ratio of the decision of the Larger Bench in the case cited above, I hold that Modvat credit will not ^{stay petition and} be admissible to the assessee on explosives. The ^{are} appeal ^{are} therefore, rejected.

(Operative part announced in the court)

(G.R.Sharma)
Member Technical.

Dt.1.1.2001
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