

GRAM : CEGCANAL

REGISTERED/A.D

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

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

Appeal No. E/2613/2000-NB(SM) BENCH NB(SM)

Dated : 19/1/2001

CEGAT
NEW DELHI

To,

CCE Indore

In the matter of :

CCE Indore

Appellant

vs.

M/s Vikram Cement

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/89/2001/NB(SM)
Dated : 16-1-2001 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 :

M/s Vikram Cement

Asstt. Registrar

1. Khor, Neemuch, (M.P)

NB(SM)

2. CCE/EC/(Appeal) Bhopal

3. Chief Commissioner of Central Excise / Customs. Jaipur

4. Adv. / Consult.

— NMC —

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- cus publication.

Asstt. Registrar

CUSTOMS EXCISE AND GOLD (CONTROL) APPELLATE TRIBUNAL,
NEW DELHI

E/Appeal No. 2613/2000-NB(S)

(Arising out of Order-in-Appeal No. 745-CE/BPL/2000 dated 19.3.2000 passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal.)

CCE, Indore

Appellant,
Reptd. by Sh. S.C. Pushkarma, JDR

Versus

M/s. Vikram Cement

Respondents,
None

Final ORDER NO. A/89/01/NB (CE/M)
DATED 16.1.2001

Per V.K. Agrawal:

In this appeal filed by Revenue the issue involved is whether Modvat credit of the duty paid in respect of explosives used by M/s. Vikram Cement is available under Rule 57A of the Central Excise Rules.

2. When the matter was called no one was present on behalf of the respondents inspite of notice. I also observe that when the matter was listed earlier on 10.11.2000 the matter was adjourned on the request of the respondents. Shri S.C. Pushkarma, learned D.R., mentions that the issue is no more res-integra as it has been decided by the Larger Bench of the Appellate Tribunal in the case of Jay Pee Rewa Cement Vs. CCE, Raipur, 2000 (38) RLT 1111 (CEGAT). In view of this I take up the appeal for disposal after hearing learned D.R. and perusing the records.

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3. In this matter a show cause notice was issued to M/s. Vikram Cement on 24.3.99 for disallowing Modvat credit amounting to Rs.2,36,600/-. Dy. Commissioner under adjudication Order No. 128/99 dated 25.8.99 disallowed the Modvat credit and imposed penalty of Rs.20,000/- holding that explosives are used for manufacturing ammonium nitrate fuel oil which is exempted from payment of duty and inputs are not used in the factory of the respondents for manufacturing final products. However, on appeal the Commissioner (Appeals) under the impugned Order set aside the adjudication Order holding that since the respondents are manufacturing clinker and cement, the explosive used for excavating lime stone is eligible for Modvat credit and as per provisions of Rule 57D(2) Ammonium Nitrate fuel oil is only an intermediate product. The issue regarding admissibility of Modvat credit on explosives was considered by the Larger Bench in the case of Jay Pee Rewa Cement (supra) wherein it was held that as explosives were used at a place away from the cement factory and that too for an activity which per se did not amount to manufacture under Section 2(f) of the Act ^{and} was anterior to the process of manufacture of cement carried out in the factory Modvat credit is not eligible. From the material placed on record in the present matter it is not clear as to whether the explosives were brought inside the factory or not and whether the mines were situated within the factory premises. For want of this information the matter is remanded to the Dy. Commissioner with a direction to decide the matter in the light of the decision of the

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Larger Bench in Jay Pee Rewa Cement case. The Appeal is thus allowed by way of remand.

(V.K. AGRAWAL)
MEMBER (TECHNICAL)

Dated 17th January, 2000

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