CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI.

PRINCIPAL BENCH, COURT NO. II

Excise Appeal No.52422/2018 (SM)

[Arising out of Order-in-Appeal No.24(RK)CE/JPR/2018-19 dated 26.04.2018 passed by the Commissioner (Appeals) & ADG, DGGSTI, Jaipur]

M/s.Shree Cement Limited **Appellant**
Bangur Nagar, Andheri Deori,
Beawar (Rajasthan).

Versus

Commissioner(Appeals) & ADG, DGGSTI, **Respondent**
Jaipur Zonal Unit,
C-62, Sarojani Marg,
C-Scheme,
Jaipur-302001.

APPEARANCE:

Ms. Rinki Arora & Himanshu Bansal, Advocate for the appellant.
Ms. Tamnna Alam, Authorised Representative for the respondent.

CORAM: Hon'ble Mr. Anil Choudhary, Member (Judicial)

FINAL ORDER NO.50750/2019

DATE OF HEARING:03.05.2019

DATE OF DECISION:03.05.2019

ANIL CHOUDHARY:

Heard the parties.

2. The issue in this appeal is related to taking of cenvat credit on the explosives used for mining of lime stone. Such lime stone was used captively by the appellant and a small part of such lime stone was cleared to one, Raj Cement. Show cause notice dated 31.03.98 and 20.07.1998 was issued requiring the appellant to pay an amount by way of reversal of 8 % of such lime stone cleared, being exempted goods under Central Excise, towards reversal of cenvat credit taken, being common input (explosives). The said issue was considered by this Tribunal in Appeal No.E/1970/2006-

EX(DB)- Final Order No.54153 dated 16.10.20104, whereby this Tribunal considered the relevant provisions under Rule 57 CC of Central Excise Rules, 1944 and after considering the ruling of the Hon’ble Gujarat High Court in the case of **CCE, Ahmedabad-II Vs. Maan Pharmaceuticals Ltd. – 2011 (263) EELT 661 (Gujarat),** where it was held that the offer of the assessee to redetermine the credit taken on common inputs and accept the offer to reverse such entire credit on common inputs insofar as it related to demand proposed in question. The Tribunal recorded the undertaking given by the assessee that if any further credit is to be reversed, the same shall be reversed within four weeks from the date of receipt of the communication from the Department.

3. Following the said rulings of this Tribunal, it is held as follows:-

> “4. It is evident that the ratio of the said judgement in the case of **Maize Products (supra)** is squarely applicable to the present case. Accordingly, we allow the appeal and remand the case to the original adjudicating for de novo adjudication in accordance with the ratio of the judgement of Gujarat High Court in the case of **M/s.Maize Products** and to verify whether the entire credit in respect of inputs used in or in relation to the production of limestone cleared to M/s.Raj Cements stands reversed and also to decide whether any interest liability with regard thereto arises. Needless to say that the assessee shall be liable to pay any differential amount of cenvat credit which is found not to have been reversed and the interest chargeable, if any. “

4. In terms of the final order of this Tribunal, the Adjudicating Authority by order-in-original dated 8.2.2017 recorded the findings that the appellant has reversed the cenvat credit. Accordingly, he was pleased to drop the demand, Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) on the new ground that credit in dispute is not relating to explosives rather it is in respect of crusher and conveyor belt,

which is installed outside the factory but adjacent to the factory. New limestone are put to conveyor belt from Russia to their factory. Reliance was placed by the Adjudicating Authority on ruling of the Hon'ble Supreme Court in the case of **Vikram Cement (supra)**, where the Tribunal had remanded the matter to the Adjudicating Authority to verify the proportionate reversal of the cenvat credit for limestone cleared to M/s.Raj Cement. Ld. Commissioner (Appeals) in para-8 of his order observed that neither in the written submissions nor at the time of personal hearing, the respondent/assessee putforth any evidence before the undersigned that cenvat credit involved in inputs used in or in relation to production of limestone cleared to Raj Cement stands reversed with interest. Rather the assessee has taken a new plea that the clearance was made to their sister concern and it was not a sale. More so, the said Raj Cement had merged with the appellant company subsequently on 11.11.1998.

5. Having considered the rival contentions and documents on record, I find that the appellant had filed written submissions on 21.01.2018 before the ld. Commissioner (Appeals), wherein in para 6.2, they have made categorical averment that they had already reversed the entire cenvat credit of Rs.72,525/- on inputs explosives used in or in relation to the production of limestone cleared to M/s.Raj Cement, vide debit entry no.145 dated 21.01.1998 and debit entry no.149 dated 28.02.1998. Such reversal of cenvat credit has already been noticed by the Department vide earlier Order-in-Original No.32/99 dated 19.03.1999. I find that the said averment has not been found to be untrue by the ld. Commissioner (Appeals) and further it had been arbitrarily observed that the appellant has not produced any evidence of reversal of cenvat credit.

6. Thus, I find that the order-in-appeal is factually wrong. Accordingly, the order-in-appeal is set aside and the order –in-original is restored. Thus, the appeal is allowed with consequential benefit to the appellant.

(Dictated and pronounced in open court)

(Anil Choudhary)
Member (Judicial)

ckp