

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA**

EASTERN ZONAL BENCH: KOLKATA

Excise Appeal No. 25/2009, C.O.-19/2009

(Arising out of Order-in-Original No. 20/COMMR./BOL/2008 dated-
10.11.2008 passed by the Commissioner of Central Excise, Bolpur)

M/s. Ultra Tech Cement Ltd.

Applicant (s)/Appellant (s)

Vs.

Commr. of Central Excise, Bolpur

Respondent (s)

Appearance:

Shri Ravi Raghavan & Shri H. Shukla, Advocates

for the Appellant (s)

Sri H.S. Abedin, A.C (A.R.)

for the Respondent (s)

CORAM:

Hon'ble Shri P.K.Choudhary, Member (Judicial)

Hon'ble Shri Bijay Kumar, Member (Technical)

Date of Hearing/Decision : 13/06/2018

ORDER NO. : F/O 76472/2018

Per Shri P.K.Choudhary

The dispute in the present case relates to the demand of CENVAT
Credit on the inputs (clinker) cleared as such for export to Bangladesh.
Show Cause Notice dated 2/11/2006 was issued alleging that the assessee

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have removed 20492.600 MT for export to Bangladesh without payment of Central Excise Duty, under LUT vide ARE 1 (s) for the said period. The Adjudicating Authority confirmed the demand of Rs.73,15,858/- alongwith interest and imposed penalty of equal amount under Rule 15 (1) of CENVAT Credit Rules, 2004. Hence, the present appeal before the Tribunal. Revenue has filed cross objection. The Ld. Advocate appearing on behalf of the appellant submits that the appellants are engaged in the manufacture of Cement which is cleared on payment of appropriate duty of excise leviable thereon. This unit of the appellant is a grinding unit where only cement is manufactured. The entire quantity of clinker required for the manufacture of cement is received from the appellant's unit at Hirni on payment of duty. The duty so paid on the Clinker is availed as credit by the appellants. The demand in the present case has been confirmed by denying credit on 20492.600 MT of Clinker cleared as such, for export to Bangladesh. The details of the quantity of Clinker received and the quantity cleared as such, is evident from the ER-6 and ER-1 Returns filed by the appellants during the disputed period. It is also the case of the appellants that the Clinker received by them from the unit at Hirni is an input. The demand relates to the quantity of the Clinker cleared for export under Letter of Undertaking. The Ld. Advocate further submits that Rule 19 of Central Excise Rules, 2002 allows for removal of any excisable goods without payment of duty from a factory of the manufacturer. In the present case the Clinker being excisable goods, the same has been removed from the factory of the appellants (who is a manufacturer) and accordingly in terms of Rule 19, the Clinker was correctly removed without payment of duty. He also relied upon the Board Circular No. 283/117/96-CX dated-31/12/1996 and Circular F. No. 345/2/2000-TRU dated 29-08-2000.

2. The Ld. D.R. reiterates the grounds of the cross objection and the order of the adjudicating authority.

3. Heard both sides and perused the appeal records. We find that the dispute in the present case relates to the demand of CENVAT Credit on the inputs (Clinker) cleared as such, for export to Bangladesh. The Commissioner in the impugned order has held that since the input (Clinker) has been removed as such, the appellants are required to reverse the credit availed thereon, in terms of provision of Rule 3 (5) of the CENVAT Credit Rules, 2002. The Commissioner also held that since the CENVAT Rules does not allow the manufacturers to clear the inputs without payment of excise duty, the credit availed is required to be reversed. The case of the Revenue is that as per the provisions of Rule 3 (5) of CENVAT Credit Rules, 2004, the inputs on which credit has been taken can be removed as such, on payment of the credit availed, equivalent to CENVAT Credit. We find from the records that the inputs on which the credit has been availed, were exports under due intimation to the Department. Board's Circular dated-29-8-2000 is for better appreciation of the law on the point:

“ Explanation to Clause (b) of Sub-rule (1) of Rule 57AB refers to payment of appropriate duty of excise if the inputs or capital goods are removed as such from a factory. It has been pointed out that there may be a situation where the input or capital goods are exported. Doubt has been expressed whether such export clearances have to be made only on payment of duty . In this context it is clarified that under the excise procedures, a manufacturer can export the goods under bond without payment of duty. This is a facility that is available to the manufacturer under the excise procedure . In such case, the appropriate duty of excise that is payable is 'nil'. Therefore, there is no bar for a manufacturer to remove the inputs or capital goods for export under bond within the Explanation referred to above.”

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We find that the Tribunal in various decisions have held that there is no bar in removal of inputs as such, underbond and there is no requirement to reverse the CENVAT Credit availed.

4. It is our considered view and in view of the provisions of Rule 19, the clarifications as issued by the Central Board of Excise and Customs and the various decisions of the Tribunal, we hold that the removal of Clinker without payment of duty for export to Bangladesh is in accordance with law. Accordingly, the impugned order confirming the duty demand alongwith interest and imposing penalty cannot be sustained and the same is set aside. The appeal filed by the appellant is allowed. The cross objection is disposed.

(Operative part of the order already pronounced in the court)

Sd/- 23/7/18

Sd/- 23/07/18

(Bijay Kumar)
MEMBER(TECHNICAL)

(P.K.Choudhary)
MEMBER(JUDICIAL)

k.b/-