

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Excise Appeal No.93 of 2010

(Arising out of Order-in-Appeal No.25/SH/CE(A)/GHY/09 dated 15.10.2009
Commissioner(Appeals), Customs & Central Excise, Guwahati.)

M/s. Cement Manufacturing Company Limited

(Lumnshong, P.O. Khahehriat, Dist. Jaintia Hills, Meghalaya.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Shillong

.....Respondent

(Crescens Building, M.G. Road, Shillong-793001.)

APPEARANCE

Shri S.P.Siddhanta, Consultant for the Appellant (s)

Shri S.S.Chattopadhyay, Authorized Representative for the Respondent (s)

**CORAM: HON'BLE SHRI P.K. CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)**

FINAL ORDER NO. 75143/2023

DATE OF HEARING : 21 March 2023

DATE OF DECISION : 21 March 2023

K. ANPAZHAKAN :

Heard both sides and considered the submissions.

2. The Appellant are availing the benefit of Notification No.33/99-CE dated 08.07.1999 (as amended). The Appellant had generated 266.28 MT, 339.75 MT and 49.4 MT of iron-scrap in the course of fabrication of plant and machinery during the period from January, 2005 to September, 2005, October, 2005 to July 2006 and August, 2006 to October, 2006 respectively, and cleared the same on payment of duty and claimed refund of Rs.4,74,972/-, Rs.4,49,422/- and Rs.74,067/- during this material period and they were granted refund. The exemption under the said Notification is not available to any excisable commodity which is not manufactured in the units located in the area

covered under the said Notification. The iron-scrap generated in the factory of the Appellant was not their manufactured product. Accordingly, the Department initiated proceedings for recovery of the amount refunded on the ground that the exemption in terms of the said Notification is not available to excisable commodity which is not manufactured in such units. Further, the iron-scrap was generated during the process of fabrication and the plant and machinery was manufactured by the Appellant. Therefore, they were not eligible for the refund in terms of the conditions of the said Notification.

3. The contention of the Appellant is that the duty was not required to be paid on waste and scrap in view of the Notification No.89/95-CE dated 18.05.95, but they paid duty from CENVAT Account, since they availed Credit on the iron and steel used in the manufacture of capital goods. The contention is that the Appellant paid duty on the scrap from their CENVAT Credit Account. The contention is that they had availed the CENVAT Credit correctly on the inputs of iron and steel used in the manufacture of capital goods which were further used in the factory for manufacture of the final product.

4. The contention of the Ld. Authorized Representative appearing for the Department is that the Appellant are availing the benefit of Notification No.33/99-CE (as amended), and in terms of the said Notification, the exemption is not available to any excisable commodity which is not manufactured in such unit. The contention is that even if the iron-scrap was generated during the process of fabrication and the plant and machinery was manufactured by them and they had also willfully suppressed and misstated the facts in their ER-I return. Accordingly, they were not eligible for the refund and the refund made to the Appellant, had been erroneously allowed to them.

5. Thus, the claim of the Department is that for claiming the benefit of Notification No.33/99-CE, the Appellant were required to utilize whatsoever Credit available to them before paying anything from the Account Current for the goods manufactured and cleared during the material period. In the instant case, the Appellant paid the duty on the

iron-scrap generated during the manufacture of the capital goods and paid the duty from the CENVAT Credit Account. To that extent they paid less duty in PLA for the cement cleared.

6. The Appellant submitted that they have manufactured capital goods and availed credit on the inputs. They have utilized the CENVAT Credit availed for the purpose of payment of duty on the waste and scrap generated during the course of manufacture of the capital goods. Since the CENVAT Credit availed on the inputs has already been utilized for payment of duty for the scrap generated, they have paid the duty for the cement manufactured by utilizing the balance CENVAT Credit and the remaining through the PLA account and claimed refund of the duty paid through PLA only. The Department is of the view that the entire CENVAT Credit availed on the inputs should have been first utilized for payment of duty on their final product namely cement and the duty should have been paid through PLA only after exhausting the CENVAT Credit for payment of duty on cement. The Appellant submitted that the Department issued Show Cause Notice for demanding duty on the scrap and proposed imposition of penalty under Section 11AC. This indicates that duty is payable on the scrap generated. Further they contended that proposing penalty under Section 11AC is legally not sustainable in respect of demand for erroneous refund.

7. Heard both sides and perused the appeal records.

8. There is no dispute in this case that the Appellant has manufactured cement as well as capital goods in the factory. During the course of manufacture of capital goods waste and scrap was also generated. Whether duty is payable on the waste and scrap is not a question before us. However, we find that the Appellant has chosen to pay duty on the waste and scrap by utilizing the CENVAT Credit. The payment of duty on the scrap has not been questioned by the Department. The Department has only questioned the payment of duty by utilizing the CENVAT Credit availed. We find that the waste and scrap generated is also a product manufactured within the factory for

which duty can be paid by utilizing the CENVAT Credit account. Hence, we hold that the payment of duty for the waste and scrap by utilizing the CENVAT Credit account was in order. For payment of duty for the cement, they have utilized the balance CENVAT Credit and the remaining duty through PLA. The refund claimed was only on the payment of duty through PLA for the cement, which is permissible as per Notification No.33/99-CE dated 08.07.1999.

9. In view of the above, we hold that the payment of duty for the scrap has been correctly paid by utilizing the CENVAT Credit account and the refund of duty paid through PLA on the cement has been correctly claimed by the Appellant as per Notification No.33/99-CE dated 08.07.1999 and hence the refund sanctioned was in order.

10. In view of the above findings, the Appeal filed by the Appellant is allowed with consequential relief, if any.

(Dictated and pronounced in the open Court.)

Sd/
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)