(1999) 08 AHC CK 0149

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No''s. 233 and 234 of 1999

Ashoka Metal Decor (P) Ltd. and Adit Metal Decor — APPELLANT

Vs

Commissioner (Appeals), Customs and Central Excise and Another — RESPONDENT

Date of Decision : 15-08-1999

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35F

Citation : (2000) 67 ECC 495

Hon'ble Judges : M.C. AgarwaL, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

M.C. Agarwal, J.—These two petitions by different petitioners arise in similar circumstances and are directed against a common order. The petitioners are represented by Sri A.P. Mathur, Advocate while the Respondents are represented by Sri Vikram Gulati, Advocate. Both of them have been heard.

2. The petitions are directed against an order passed by the Commissioner (Appeals), Customs and Central Excise, Ghaziabad whereby in exercise of powers under the proviso to Section 35-F, he partly waived the condition of the pre-deposit of adjudicated dues.

3. The petitioners had availed the Modvat Credit in respect of inputs which were used in the production of goods which during the process of production, were sent to other persons outside the factory for job work. This is permissible under Rule 57F of the Central Excise Rules, Sub-rule (11) whereof requires. that if inputs or partially processed inputs are not received back in the factory by the manufacturer of final products within a period of 60 days or the extended period as may be allowed by the Asstt. Commissioner of Central Excise, the manufacturer shall recalculate the amount of actual credit attributable to such inputs or on inputs contained in the partially processed goods and thereafter he shall adjust the differential amount, if any, after taking into account the amount

already debited while sending the inputs or partially processed inputs from his factory. Certain goods were sent by the petitioners for processing and the petitioners availed credit in respect of inputs used therein but the goods were not received back in the factory of the petitioners within a period of 60 days as prescribed in Sub-rule (11). Both the petitioners after the expiry of the period of 60 days applied for extension of time which was not allowed. Thereafter the Asstt. Collector passed adjudication order demanding Rs. 2,69,275 from M/s Ashoka Metal Decor (P) Ltd., the petitioner in W.P. No. 233/99 and Rs. 9,99,837 from M/s Adit Metal Decor (P) Ltd., the petitioner in the other writ petition. Both the petitioners have filed first appeals before the Commissioner (Appeals).

4. u/s 35F an appeal cannot be entertained unless the appellant deposits the adjudicated dues with the adjudicating authority but the proviso to Sec. 35F confers jurisdiction on the appellate authority to dispense with the pre-deposit wholly or partially subject to such conditions as it may deem fit, if it is of the opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person. The petitioners, therefore, moved applications for the waiver of the conditions of pre-deposit and the Commissioner has directed the petitioners to deposit Rs. 2,02,000 and Rs. 7,50,000 respectively. The Commissioner has reduced the amount after looking to the merits of the petitioners'' case and has also stated that the appellants have not pleaded financial hardship. Copies of the petitions moved before the appellate authority have been annexed to the writ petition which show that financial hardship was not contended before the respondents. The learned Counsel for the petitioners, however, asserted that the financial hardship is not necessary and that the petitioners have applied for extension of time which have not been allowed.

5. It is only the first appeals that are pending and the adjudication orders indicate that the Modvat credit was denied only on the ground that the goods were not received back within 60 days and an application for extension was moved after the expiry of the period of 60 days. The adjudication order does not state on what date the goods were actually received back and whether in some cases they were not received back at all. The learned Commissioner had dispensed with the pre-deposit of a very negligible part of the demand. Looking to the circumstances that the denial of Modvat Credit is based on a technical default, a fair exercise of discretion under the proviso to Section 35F would justify that pre-deposit of a substantial part of demand should have been dispensed with.

6. The writ petitions are, therefore, allowed and it is ordered that the Commissioner''s impugned order would stand modified to the effect that in the case of the petitioner M/s. Ashoka Metal Decor (P) Ltd., the petitioner would deposit Rs. one lakh within a period of one month from today and the petitioner M/s. Adit Metal Decor to deposit Rs. 2,50,000 within the same period and on deposit of the aforesaid amount, the condition of pre-deposit of the balance shall stand dispensed with.