(2011) 01 AHC CK 0300

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 746 of 2007

Bhushan Steel and Strips Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:
Central Excise Rules, 1944 — Rule 173L
Central Excise Rules, 2002 — Rule 18, 3(4)

Citation : (2011) 265 ELT 31

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—By means of the present writ petition, the Petitioner is challenging the order dated 22-1-2007 passed by the Joint Secretary, Government of India, Ministry of Finance, Department of Revenue, New Delhi by which the revision filed by the Petitioner has been rejected.

2. The brief facts of the case are that the Petitioner is a Company incorporated under the Indian Companies Act. The Petitioner is engaged in the manufacture of C.R. Sheets/Coils/Sheets/G.P. Sheets falling under Chapter 72 of the Central Excise Tariff Act, 1985 (hereinafter referred to as the "Act"). The Petitioner has imported certain capital goods, namely, process control equipments falling under Chapter 90 of the Act and claimed MODVAT credit of the duty paid thereon. It appears that the said process control equipments were found defective and, therefore, the Petitioner exported the same outside the country on payment of duty at Rs. 52,416/- on 5-9-2003. Subsequently, the Petitioner has filed refund claim on the ground that the said goods have already been suffered duty while importing the same. The Assistant Commissioner, Central Excise, Ghaziabad vide its order dated 4-10-2004 sanctioned the refund claim.

3. Feeling aggrieved by the said order, the department filed appeal before the Commissioner (Appeals) Customs and Central Excise, Meerut-1, now at

Ghaziabad. The said appeal has been allowed vide order dated 27-3-2006 and the order of the Assistant Commissioner, Central Excise, Ghaziabad has been set aside.

4. Being aggrieved by the order of the Commissioner (Appeals), the Petitioner filed revision before the Central Government u/s 35(E) of the Central Excise Act. The revision has been dismissed by the impugned order. Hence the present writ petition.

5. Heard Sri A.P. Mathur, learned Counsel for the Petitioner.

6. Learned Counsel for the Petitioner submitted that since the Petitioner has already deposited duty while exporting the goods, the Petitioner shall not be liable for the duty again and, therefore, the amount deposited while exporting the goods should be refunded.

7. I have perused the impugned order of the Government of India and the order of the Commissioner (Appeals).

8. The Commissioner (Appeals) has allowed the appeal of the department on the ground that Rule 18 of the Central Excise Rules, 2002 (hereinafter referred to as "Rules") falls under the category of return. Since the goods were sent back to the foreign supplier, being of defective nature, on no commercial FOB value. The parties were required to pay/reverse an amount equal to the credit availed in respect of such goods as per the provisions of Rule 3(4) of the Rules. But the Petitioner cleared these goods on payment of duty and filed refund/rebate claim. Further, in all the cases of exports, the party has to provide BRC of proceeds to the department within 180 days of export as mentioned in Board''s circular dated 12-11-1997. Since no proceeds have been received by the party in foreign exchange, the requirement of the Board circular has not been met. Therefore, it does not fall under the category of export. In this process of return of the goods, the party has unjustly enriched to the extent of the credit taken CVD at the time of importation. The revisional authority has rejected the revision on the ground that the goods exported were not excisable goods and were not liable to excise duty being not manufactured by the Petitioner and, therefore, the refund is not admissible under Rule 173L of the Central Excise Rules, 1944.

9. I do not find any error in the order. Admittedly, the Petitioner has not reversed the MODVAT credit availed by it while returning the goods. The goods, which are claimed to have been exported, are not excisable goods. Therefore, the refund claim is not admissible under Rule 173L of the Rules and even the condition of Rule 173L has not been complied with. It is not a case of double deposit of duty inasmuch as MODVAT credit availed has not been reversed.

10. In the result, the writ petition fails and is dismissed.

