(2003) 01 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : Central Excise Case No. 173 of 2002

CCE — APPELLANT

Vs

Shivaye Industries — RESPONDENT

Date of Decision : 20-01-2003

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

Citation : (2005) 122 ECR 405

Hon'ble Judges : N.K. Sodhi, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—This is a petition filed by the Revenue u/s 35H(1) of the Central Excise Act, 1944 for a mandamus directing the Customs, Excise and Gold (Control) Appellate Tribunal to state the facts of the case and refer the question of law which according to the Department arises out of the order dated 11.3.2002 passed by the Tribunal.

2. We have perused the order passed by the Tribunal and are of the view that no question of law arises therefrom. Deemed Modvat credit had been claimed by the assessee but the same was disallowed by the adjudicating authority solely on the ground that a certificate from the jurisdictional Range Officer showing that the inputs had suffered excise duty had not been produced. This order was upheld by the Commissioner in Appeal. Feeling aggrieved by the disallowance, the assessee filed an appeal before the Tribunal which has reversed the order of the Commissioner and held that there is no requirement of law that an assessee in order to claim the benefit has to produce the aforesaid certificate. Deemed modvat credit was being claimed in terms of the Notification No. 58/97 dated 30.8.1997. We have gone through this notification and find that the only requirement is that the assessee should produce the invoices covering the goods in which the manufacturer should give a declaration that the inputs had suffered excise duty. It is not in dispute that such a declaration had been furnished by the

assessee. In this view of the matter, the Tribunal was right in reversing the order of the Commissioner. Since there is no requirement in the notification that the certificate from the jurisdictional Range Officer had to be produced, we find no ground to issue the mandamus prayed for.

Dismissed.

