(2015) 02 AHC CK 0176

In the Allahabad High Court

Case No : Central Excise Reference No. 19 of 2001

Century Laminating Com. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Citation : (2015) 320 ELT 406 : (2015) 33 GSTR 492

Hon'ble Judges : Tarun Agarwala, J;Satish Chandra, J

Bench : Division Bench

Advocate : A.P. Mathur, for the Appellant; R.C. Shukla, Advocates for the Respondent

Judgement

Tarun Agarwala, J.

1. The assessee did not have adequate space within the factory premises for storage of raw materials, namely, paper. Accordingly, the assessee sought permission by letter dated 1st December, 1994 seeking permission to store the inputs used by it outside its factory premises and permit it to avail Modvat credit on the duty paid thereon. The Superintendent, Central Excise Range, Hapur by an order dated 8th February, 1995 rejected the assessee''s application holding that no permission can be granted to store the goods outside the godown. The authority, however, permitted the assessee to store the goods and keep bringing the goods in smaller lots and take credit on the receipt of the last and final lot. For facility, the order of the Superintendent, Central Excise dated 8th February, 1995 is extracted hereunder:--

"I have been directed by the Assistant Collector Div IV, Gzb, to inform you that the permission regarding storage of goods in the outside godown is not permissible. However you may store the goods and keep bringing the goods in similar lots and take credit on the receipt of the last and final lot."

Based on the aforesaid direction, the assessee started bringing the goods in smaller lots and availed credit on receipt of the last and final lot. However, the last and final lot was received after the expiry of six months from the date of the initial issuance of the invoice.

2. In view of Rule 57D(6) as it stood now Rule 57G(2) of the Central Excise Rules a show cause notices dated 1st July, 1996, 24th August, 1996 and 17th September, 1996 was issued alleging that the assessee has wrongly availed credit amounting to Rs. 3,86,366/- on the strength of invoices issued by M/s. Sirpur Paper Mills Ltd. and I.T.C. Bhadrachalam Paper Boards Ltd. after six months. The assessee objected to the show cause notice, which was rejected and the Assistant Commissioner of Central Excise by an order in original dated 29th April, 1997 confirmed the demand. The appeal filed by the assessee was rejected by the Commissioner of Central Excise (Appeals) by an order dated 9th March, 1998. The assessee took up the matter in reference to the High Court in a reference application. The High Court allowed the reference application and directed the Tribunal to state the case and refer the questions of law to the High Court for its opinion. The Tribunal has accordingly, framed the question of law to the High Court for its opinion, namely,

"Whether, in view of the Superintendent''s letter C. No. V(1) Century/S-l/HPR/95/359 dated 8-2-1995 as well as Pune Trade Notice No. 67/96 dated June 1996, the provisions of Rule 57D(6), now 57G(2), could apply to deny the applicant the benefit of Modvat credit?"

3. We have heard Shri A.P. Mathur, the learned counsel for the assessee and Shri R.C. Shukla, the learned counsel for the Central Excise department.

4. Rule 57D(6) now 57G(2) of the Central Excise Rules reads as under:--

"Provided further that the manufacturer shall not take credit after six months of the date issue of any of the document specified in first provision to this sub-rule."

5. The aforesaid rules makes it apparently clear that the manufacture shall not take credit after six months of the date of issue of any document. The assessee applied for permission to store the inputs used outside the factory premises. This application was rejected subject to the condition that the assessee could bring in the goods in smaller lots and take credit on the receipt of the last and final lot. Based on this direction, the assessee brought the goods in smaller lots spaced over a period of time and the last and final lot apparently was brought after the expiry of six months.

6. We find that the department had issued a Trade Notice No. 67 of 1996 dated June 1996 clarifying and deciding to allow Modvat credit in such situations where a manufacture after buying the goods could not bring them inside the factory premises on account of shortage of space or under other unforeseen, unavoidable circumstances, etc. Clause 5(v) of the said departmental trade notice stated as under:

"5(v). The manufacturer can take credit of quantity of inputs in RG 23A Pt.I as and when these are received inside the factory premises under the cover of delivery challan issued from the storage place. However, credit entry in RG 23A Pt.II shall be taken only when entire quantity of inputs covered under a particular invoice received at the storage godown is transhipped and received inside the factory for being put to use in production. These entries shall be make item-wise separately."

7. The aforesaid trade notice clearly indicates that credit entry can only be taken when the entire quantity of inputs covered under a particular invoice is received at the godown.

8. In the light of the aforesaid, when certain goods based on the invoice was received during the period of six months but the last and final lot was received after the period of six months, we are of the opinion that Rule 57D(6) now Rule 57G(2) of the Rules being procedural in nature does not disentitle the claim of the assessee for claiming Modvat credit. In the absence of any deliberate delay, coupled with the fact that the transaction executed by the assessee, being a bonafide one and, based on the direction of the Superintendent, Central Excise dated 8th February, 1995, the assessee, in the instant case, was entitled for Modvat credit. The Trade Notice No. 67 of 1996 clarifies such peculiar circumstances. In view of the aforesaid, we are of the view that the applicant-assessee was entitled to the Modvat credit based on the letter of the Superintendent, Central Excise Range, Hapur dated 8th February, 1995, The question of law is answered accordingly.

