(2008) 06 KL CK 0002

In the High Court Of Kerala

Case No : C.E.A. No. 5 of 2006

Commissioner APPELLANT

Vs

Libra Steels (P) Ltd. RESPONDENT

Date of Decision : 11-06-2008

Acts Referred:

Central Excise Rules, 1944 — Rule 57F(3)
Central Excises and Salt Act, 1944 — Section 35G

Citation : (2011) 271 ELT 177

Hon'ble Judges : V.K.Mohanan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : John Varghese, A.S.G, for the Appellant; Libra Steels (P) Ltd . (Party), for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—This appeal filed by the Commissioner of Central Excise u/s 35G of the Central Excise Act is against the order of the CESTAT allowing the appeal filed by the respondent, by which demand raised on them and confirmed in first appeal was cancelled by the Tribunal.

2. In spite of service of notice, respondent has not chosen to appear before this Court. Therefore, we heard Assistant Solicitor General appearing for the appellant.

3. The facts leading to the controversy as evidenced from the records are the following. Respondent made steel ingots in their plant and supplied the same to job worker, namely, M/s. Palakkad Steels, for conversion of the same into re-rolled products and for returning re-rolled products to the respondent, which marketed it. Even though duty was payable by the manufacturer of the hot re-rolled products under notification No. 214/86, respondent admittedly, cleared ingots to the job worker in terms of Rule 57F(3) of the Central Excise Rules without payment of duty on the ground that if there is duty liability on the final product, respondent will pay the same. However, when the re-rolled products

were received back and cleared by the respondent, they claimed the benefit of notification No. 16/97, which provides for exemption to SSI units. Since respondent was not engaged in the manufacture of the items cleared, duty was demanded on the final product by disallowing exemption under Notification No. 16/97. Even though demand was confirmed in first appeal. Tribunal reversed the same and cancelled the demand, against which this appeal is filed.

4. On going through the Tribunal''s order, we find that the Tribunal had committed a basic error in assuming that the duty demanded is on the ingots removed to the job worker. On the other hand, from the orders of the adjudicating authority and the first appellate authority, we find that demand is raised on re-rolled products cleared by respondent. Since respondent was not the manufacturer, they were not found to be eligible for the SSI exemption claimed under Notification No. 16/97. The Tribunal has relied on several decisions of the other tribunals in cancelling the demand of duty. Moreover, the Tribunal has only considered the exemption available on job worker under Notification No. 214/86, whereas the exemption claimed and disallowed in respondent''s case is under Notification No. 16/97. Since Tribunal has not considered respondent''s liability in payment of duty on the re-rolled products, but has decided the appeal by treating the demand as one pertaining to clearances of ingots, we set aside the order of the Tribunal and restore the appeal back to the Tribunal for fresh decision after hearing the parties

