(2010) 02 P&H CK 0209

In the Punjab And Haryana At Chandigarh

Case No : CEA No. 82 of 2006

Commissioner Central Excise Commissionerate APPELLANT

Vs

Pepsi Foods Ltd. (Snack Food Division) RESPONDENT

Date of Decision : 08-02-2010

Acts Referred:
Central Excise Rules, 1944 — Rule 173Q

Citation : (2010) 02 P&H CK 0209

Hon'ble Judges : Mehinder Singh Sullar, J;Ashutosh Mohunta, J

Bench : Division Bench

Advocate : Sanjeev Kaushik and Gurpreet Singh, for the Appellant; M.P. Devnath, for the Respondent

Final Decision : Dismissed

Judgement

Ashutosh Mohunta, J.—The Revenue has filed the present appeal impugning the order dated 16.11.2004 (Annexure P-3), passed by the Customs, Excise and Service Tax Appellate Tribunal (for short ''the Tribunal'') vide which the respondent has been held entitled to claim Modvat credit on the capital goods.

2. This Court while admitting the appeal framed the following question of law:

1. Whether the Tribunal is correct in allowing modvat credit on capital goods received by the party but not acquired by them?

2. Whether finding that goods were imported by M/s Frito Lay India and endorsement in the bill of Entry was made in favour of the respondent, is without any basis?

3. Briefly the facts of the case are that M/s Frito Lay India supplied capital goods to M/s Pepsico, out of which they manufacture finished products, namely, Masala Balls, Potato Chips and Tomato Wheels. The goods manufactured by the respondent were under the brand-name of "Lays" and "Cheetos". The respondent availed Modvat credit on the capital goods received by it from M/s Frito Lay

India. This was, however, objected to by the Revenue as according to them the Bill of Entry/Invoices were not in the name of the respondent, but were in the name of M/s Frito Lay India. Show cause notices were issued as to why they should not be imposed penalty under Rule 173Q of the Central Excise Rules, 1944 for having availed wrong Modvat credit.

4. The order was passed by the adjudicating authority vide order dated 4.9.2000 (Annexure P-1), wherein Modvat credit and penalty of Rs. 40,000/-, alongwith interest, was also imposed upon the respondent. The respondent filed appeal which was dismissed by the Commissioner (Appeals) vide order (Annexure P-2). The respondent challenged the order by filing an appeal which has been allowed vide impugned order (Annexure P-3) passed by the Appellate Tribunal.

5. Counsel for the respondent has submitted that Modvat credit cannot be denied to the respondent in view of the law laid down in Sharda Motors Industries Ltd. v. CCE, Chennai, reported as 2002 (15) E.L.T. 759 and 2003 (111) ECR 855 , wherein it has been held that ownership of goods is no criteria for denying Modvat credit in view of the Circular of the Board dated 1.3.1999. Counsel for the respondent has also placed reliance on Union of India v. Marmagoa Steel Ltd., reported as 2008 (229) E.L.T. 481 (S.C.).

6. We have gone through the order passed by the Tribunal as well as the case law cited by the counsel for the parties. In the present case, although the capital goods were imported by M/s Frito Lay India, but the endorsement in the Bill of Entry was made in favour of the respondent. In Sharda Motors'' case (supra) it has clearly been held that ownership of goods is no criteria for denying Modvat credit, specially in view of the Circular dated 1.3.1999. Since in the present case, the Bill of Entry was made by M/s Frito Lay India in favour of the respondent, thus, Modvat credit could not be denied to the respondent.

7. In view of the above, we are of the considered opinion that the Tribunal was correct in allowing the Modvat credit on the capital goods received by the respondent particularly when the endorsement in the Bill of Entry was made in its favour by M/s Frito Lay India. Accordingly, both the questions of law are answered in favour of the assessee and against the Revenue. The order of the Tribunal is upheld.

8. In view of the above, we find no merit in the appeal and the same is dismissed.

