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(2010) 10 BOM CK 0084

In the Bombay High Court

Case No : Central Excise Reference No. 4 of 2003

Commissioner of C. Ex. APPELLANT

Vs

CEGAT RESPONDENT

Date of Decision : 13-10-2010

Acts Referred:
Central Excise Rules, 1944 — Rule 57(B), 57(F)(2), 57(J)

Citation : (2010) 259 ELT 677

Hon'ble Judges : J.P. Devadhar, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : S.K. Mishra, ASG, for the Appellant; G. Jain, h/f., Atul Pande, for the Respondent

Final Decision : Allowed

Judgement

J.P. Devadhar, J.—Heard learned Counsel for the parties.

2. This application is filed by the Commissioner of Central Excise, Nagpur-applicant against the decision of Central Excise and Gold (Control) Appellate Tribunal, dated 24-12-2002.

3. The applicant seeks an order directing the CESTAT to raise and refer the following question of law that arises out of the order of the CEGAT, dated 24-12-2002 for the opinion of this Court:

Whether Higher Notional Credit under Rule 57-B of the erstwhile Central Excise Rules, 1944 read with notification issued thereunder is available only in respect of an independent SSI Unit (who carry out manufacture on Principal to Principal basis on the raw material purchased by them) or it covers job workers as well who carry out the manufacturing activity on the raw material supplied by the principal manufacturer and returns the manufactured intermediate goods along with wastes after job work to the principal manufacturer particularly when the facility for movement of inputs on which MODVAT credit has been taken is provided under Rule 57-F(2) through a special procedure to be followed in this regard as well as procedure of Rule 57-J of the erstwhile Central Excise Rules, 1944?

4. By consent, the application (wrongly numbered as Reference) is allowed. By consent, the application is treated as Reference and taken up for final hearing.

5. The relevant facts are that M/s. Central Cables Pvt. Ltd., Respondent No. 2 herein, had purchased aluminium/copper rods from MMTC for their actual use on the strength of quota allotted to them under regular gate passes in their own name. On receipt of the said goods, the Central Cables Pvt. Ltd. claims to have transferred the aluminium/copper rods to their job workers, namely, Respondent Nos. 3 to 5 for manufacture of intermediate products, namely, aluminium/copper wires by endorsing the gate passes. Admittedly, the Central Cables Pvt. Ltd. have paid job work charges at the rate of Rs. 2/- per kg. to the Respondent Nos. 3 to 5 and after manufacturing wires, the job workers have not only returned the manufactured goods, but also returned the wastes arising in the process of manufacture of wires to the Central Cables Pvt. Ltd. It appears that the job workers, who are small scale industrial units have paid concessional rate of duty while returning the goods to Central Cables Pvt. Ltd. and the Central Cables Pvt. Ltd. have claimed full credit under Rule 57-B of the Central Excise Rules, 1944.

6. The question as to whether the Central Cables Pvt. Ltd. had transferred the raw materials to the job workers, if transferred the goods for manufacture of intermediate product, then how the job worker could take credit of duty paid by Central Cables Pvt. Ltd. on raw materials purchased from MMTC under actual user conditions has not been considered by the Authorities below. Similarly, if the Respondent Nos. 3 to 5 were the job workers and after manufacturing the intermediate products were liable to return the goods to the suppliers of raw materials, namely, Central Cables Pvt. Ltd., then where was the question of their returning the manufactured goods on payment of duty has not been considered by any of the Authorities below. If the job worker was not liable to pay excise duty while returning the manufactured goods to the supplier of raw materials, then the question of the supplier of the raw materials claiming full credit under Rule 57B of the Central Excise Rules, 1944 does not arise at all.

7. In the circumstances, the learned Counsel on both sides agree that the order of the CEGAT dated 24-12-2002 may be quashed and set aside and the matter may be remanded back to the CEGAT for deciding the above issues afresh in accordance with law.

8. Accordingly, the reference is allowed. The order dated 24-12-2002 passed by the CEGAT is quashed and set aside and the Tribunal is directed to dispose of the matter afresh in accordance with law. The reference is disposed of. No order as to costs.

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