(2006) 07 MP CK 0072

In the Madhya Pradesh High Court

Commissioner of C. Ex. APPELLANT

Vs

Shree Synthetics RESPONDENT

Date of Decision : 27-07-2006

Acts Referred:

Citation : (2006) 07 MP CK 0072

Hon'ble Judges : S.K. Kulshrestha, J;N.K. Mody, J

Bench : Division Bench

Judgement

1. Heard.

The Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi, has referred the following two questions for the opinion of this Court:

(i) Whether the Endorsed Gate-pass issued/endorsed after 1.4.94 can be considered as a valid document for availments of Modvat credit under Notification 16/94-CE(NT) dated 30.3.94 issued Under Rule 57G(2) of Central Excise Rules?

(ii) Whether the CEGAT is empowered to treat a document not prescribed under proviso to Sub-rule (2) of Rule 57G of the Central Excise Rules, or the Notification issued thereunder, as valid duty paying documents?

2. As per the statement appended, the Tribunal has rejected the Revenue''s appeal holding that the Modvat Credit can be taken on the strength of gate-pass issued before 1.4.1994, but endorsed subsequently and on which credit have been taken before 30th June, 1994. In doing so, the Tribunal followed its earlier decisions in the case of 1996 (64) ECR 1 25 and the decision in CCE v. Shine Wires Pvt. Ltd. 1998 (103) E.L.T. 425, The Modvat Scheme was introduced in March, 1986 vide incorporation of Rules 57A to 57J in the Central Excise Rules, 1944 to permit availment of credit of duty paid on excisable goods used as inputs in the manufacture of final products. Rule 57G prescribed procedure to be followed by the manufacturer intending to take such credit. The Ministry, from time to time, issued instructions prescribing certain documents under the proviso to Rule 57G. On 1.3.1994, vide Notification No. 4/94-C.E. (N.T.), the proviso was

amended stipulating that such prescription by the Central Government, should be by Notification in the official Gazette. Accordingly, Notification No. 16/94-C.E. (N.T.), dated 13.3.1994 was issued enumerating the documents prescribed as original documents and referring file number and the date of the order under which the various documents were initially prescribed to be original documents. The Notification and the two entries of the Table which are relevant for the disposal of this Reference are reproduced hereinunder:

Notification No. 16/94-C.E. (N.T.), dated 30.3.1994.

In exercise of the powers conferred by Rule 57G of the Central Excise Rules, 1944 the Central Government hereby prescribes the documents specified in Column (3) of the Table hereto annexed and issued under the authority of the Central Board of Excise and Customs or, the Central Excise Rules, 1944 specified in the corresponding entry in column (2) of the said Table for the purpose of the said rule:

Provided that the documents have been issued before 1.4.1994 and the credit under the said rule has been taken on or before 30.6.1994.

TABLE

1 to 9 xxxxxxxxxxxx xxxx xxxx xxxx

10 (i) F. No. 263/88-CXB, dated Endorsed gate passes/ 23rd January, 1989 subsidiary gate passes/ certificate

(ii) F. No. 263/19/89. CX.8, dated 17th April, 1989

(iii) F. No. B-22/88/86-TRU, dated 10th April, 1986.

11 xxxxxxxxxxxx xxxxxxxxxxxx

12 Rule 52A (as it stood before Gate pass issued under 1st April, 1944) Rule 52A, as it stood be- fore 1.4.1994

13 xxxx xxxx xxxx xxxxxxxxxxxx

3. It is apparent from the proviso to the Notification that in order that a person avails credit, he has to do so before 30th June, 1994, on the basis of the endorsed gate-passes/subsidiary gate passes/certificates issued before 1.4.1994. Under the Notification, therefore, no gate passes could be issued after this date. The facility of endorsing gate passes co-existed with the gate pass, therefore, the endorsed gate pass in order to derive benefit of this Notification could also have been issued only before 1.4.1994. Notification is to be strictly construed and when the language is plain and unambiguous, it leaves no doubt that both the requirements are concurrent. In our opinion, the requirement contemplated by the Notification is that gate pass should have been issued before 1.4.1994 and endorsement should also have been made before that date. This twin requirement is to be completed before 1.4.1994 in order that a person avails credit before 30.6.1994. We, therefore, answer both the questions in favour of

the Revenue and against the respondent.