(2010) 08 BOM CK 0051

In the Bombay High Court

Case No : Central Excise Appeal No. 1 of 2004

Commissioner of C. Ex. APPELLANT

Vs

Trimurti Ispat Ltd. RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:
Central Excise Rules, 1944 — Rule 173(Q), 57(1)(4), 57(1)(5)

Citation : (2010) 259 ELT 686

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

Bench : Division Bench

Advocate : S.K. Mishra, ASG, for the Appellant; N. Phadnis, for the Respondent

Judgement

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

2. The appeal is admitted on the following questions of law:

(A) Whether imposition of penalty under Rule 173Q of the erstwhile Central Excise Rules, 1944 read with Rule 57-1(4) ibid, is to be necessarily interpreted as mandatory penalty under Rule 57-1(4) of the erstwhile Central Excise Rules, 1944?

(B) Whether in absence of apportionment of penalty under Rule 173Q and Rule 57-1(4) of the erstwhile Central Excise Rules, 1944, whole of the penalty can be held to be non-sustainable?

(C) Whether the Hon''ble Tribunal has erred in allowing Respondent No. 2''s appeal in respect of penalty on them under Rule 173Q of the erstwhile Central Excise Rules, 1944, particularly if the Respondent No. 2 does not dispute duty liability of Rs. 2,63,509/- by way of reversal credit and the Tribunal has upheld the duty liability?

3. During the period from November 1994 to May 1995, the Respondent-Assessee had availed MODVAT credit of Rs. 2,63,509/- on the strength of invoices issued by M/s. Tara Re-rolling Mills.

4. On being found that the said M/s. Tara Re-rolling Mills had neither received any raw material in their factory nor undertaken any manufacturing activity in their factory and had issued fabricated invoices, notice was issued to the Respondent-Assessee to show cause as to why the MODVAT credit of Rs. 2,63,509/- should not be disallowed and penalty and interest under Rules 57-1(4) and 57-1(5) of the Central Excise Rules, 1944 should not be recovered from the Assessee. On conclusion of the adjudication proceedings, the Assessing Officer disallowed the MODVAT credit and imposed penalty and interest under Rules 57-1(4) and 57-1(5) of the Central Excise Rules, 1944. On appeal filed by the Respondent-Assessee, the Commissioner of Central Excise upheld the order of the Assessing Officer. On further appeal, the Tribunal by the impugned order, deleted the interest and penalty solely on the ground that Rules 57-1(4) and 57-1(5) of the Central Excise Rules, 1944 were introduced by Notification No. 14 of 1996 dated 23-7-1996 with effect from 23-7-1996.

5. It is true that Rules 57-1(4) and 57-1(5) of the Central Excise Rules, 1944, which were brought into force with effect from 23-7-1996, would not have any retrospective effect. However, the said Rules would be prospectively applicable to the case of the Assessee. This Court in the case of The Commissioner of Central Excise and Customs Vs. Fibre Foils Ltd., has held that penalty under Rule 57-1(4) is mandatory. In these circumstances, the Tribunal was not justified in deleting the imposition of penalty and interest merely on the ground that the said Rules came into force with effect from 23-7-1996. In this view of the matter, the order of CESTAT dated 4-7-2003 is quashed and set aside and the matter is remanded back to the CESTAT to decide the appeal afresh in accordance with law.

6. The appeal is disposed of. No order as costs.

