(2002) 10 P&H CK 0097

In the Punjab And Haryana At Chandigarh

Case No : Central Excise Case No. 35 of 2002

Commissioner of C. Ex. APPELLANT

Vs

Venus Indus. Corporation RESPONDENT

Date of Decision : 10-10-2002

Acts Referred:

Central Excise Rules, 1944 — Rule 57G
Central Excises and Salt Act, 1944 — Section 35H

Citation : (2003) 161 ELT 126

Hon'ble Judges : Virender Singh, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : M.S. Guglani, Addl. Central Govt. Standing, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—This is a petition u/s 35H(1) of the Central Excise Act, 1944 for a mandamus directing the Customs Excise and Gold Control Appellate Tribunal, New Delhi to refer to this Court the question of law, which according to the Department arises from its order dated February 22, 2001, copy of which is at Annexure P3 with the petition.

2. We have heard Counsel for the Department and also perused the order of the Tribunal.

3. The assessee had claimed Modvat credit on the basis of invoices issued by M/s. Indian Oil Corporation from its duty paid tanks/stock. The Assistant Commissioner Central Excise disallowed the Modvat credit on the ground that the invoices did not contain the requisite information and particulars and, therefore, those were not valid duty paying documents. The assessee took the matter in appeal before the Commissioner (Appeals), who dismissed the same on June 13, 2000. Thereafter, an appeal was filed before the Tribunal, which has been allowed. The Tribunal has relied upon its earlier decisions in 1996 (88) ELT 58 and 1997 (90) ELT 332 , wherein it has been held that such documents are valid

duty paying documents under Rule 57G of the Central Excise Rules.

4. Learned Counsel for the petitioner fairly concedes that the Department has accepted the view of the Tribunal in these two cases and that no reference petition was filed. He, however, states that the Tribunal had itself taken a different view in another case in 2001 (136) ELT 168 .

5. We have gone through the judgment of the Tribunal in IFCA Bottling Company''s case (supra) and find that the issue therein was decided on the basis of the concession of the parties and the issue was not debated. Since the Department has accepted the view of the Tribunal in the aforesaid two cases, there is no reason it should file the present petition for reference of the question of law. Consequently, we hold that the petition is not maintainable. It is accordingly dismissed.

