(2001) 08 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : C.C.E.S. No. 17 of 2001

Commissioner of C. Ex., Chandigarh — APPELLANT

Vs

J.R. Engg. Works — RESPONDENT

Date of Decision : 30-08-2001

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

Citation : (2002) 79 ECC 423 : (2002) 140 ELT 79

Hon'ble Judges : Jawahar Lal Gupta, J;Ashutosh Mohunta, J

Bench : Division Bench

Advocate : Rajesh Gumber, for the Appellant;

Final Decision : Dismissed

Judgement

Ashutosh Mohunta, J.—The Revenue has filed the present reference petition u/s 35H(1) of the Central Excise Act, 1944 against the order Annexure P3 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (for short to be referred as the ''CEGAT''), dated May 10, 2000. 2000 (122) ELT 514

2. The petitioner has prayed that the following question arises out of the order of the Tribunal -

"Whether Modvat credit is eligible on the invoices which does not contain full particulars, such as, Assessanotificationble value, which is required as per Notification No. 3/94-CE., dated 4-7-1994?"

3. Briefly, the facts are that the respondent M/s. J.R. Engineering Works are engaged in the manufacture of forklifter, excavator & tractors falling under Chapter 84 & 87 of the Central Excise Tariff Act, 1985. Respondent No. 1 took Modvat credit of Rs. 1,67,909.50 on the basis of various invoices. The adjudicating authority issued show cause notices to the respondent and ultimately, vide order dated November 16, 1975 the Additional Commissioner disallowed the Modvat credit availed of by respondent No. 1 on the ground that

the assessable value of the goods in respect of invoices at Serial Nos. 1 to 5 had not been given.

4. M/s. J.R. Engineering Works filed an appeal. The Commissioner (Appeals) Central Excise dismissed the appeal vide order dated November 18, 1999, Annexure P2, upholding the order of the Additional Commissioner, Customs and Central Excise, Chandigarh dated November 16, 1995.

5. Respondent No. 1 approached the CEGAT against the orders of the authorities below. Vide order dated May 10, 2000 the Tribunal set aside the orders passed by the Additional Commissioner, Customs and Central Excise, Chandigarh, Annexures P1 and P2, and held that the Modvat credits availed of by respondent No. 1 on the invoices issued by M/s. CITCO were correctly claimed. It, however, held that the credit availed of with respect to the invoices issued by M/s. Reliable Electrodes cannot be allowed because no additional particulars were furnished.

6. Mr. Rajesh Gumber, learned Counsel for the Revenue has argued that the respondent did not give the particulars with regard to the assessable value of goods and as such, no Modvat credit should have been allowed to it. He argued that non-giving of particulars is not just a procedural or a technical lapse but is a substantial requirement of law. The party claiming Modvat credit must establish the duty paid on the inputs.

7. We have considered the arguments advanced by the learned Counsel for the Revenue. A perusal of the show cause notices reveals that the adjudicating authority did not specify as to what information was required to be stated on the invoices. Despite this, the respondent had furnished dealer''s certificate wherein all the necessary particulars of the manufacturer''s invoices were mentioned. The respondent had submitted the complete information with regard to five invoices issued by M/s. CITCO. Thus, we fully agree with the finding of the Tribunal that the additional evidence and details of the ''manufacturer''s invoices did contain complete particulars. Moreover, in the show cause notice issued by the adjudicating authority, it has neither been mentioned as to which particulars are required to be submitted by the assessee, nor there was any allegation that Modvat credit would not be admissible if the assessable value of the goods was not stated. The learned Counsel failed to show any provision which requires the stating of assessable value of goods to be a mandatory requirement For availing the credit in terms of the Notification No. 33/94-C.E. (N.T.), dated 4-7-1994.

8. Thus, no question of law arises for any reference and consequently, the reference petition filed by the Revenue is dismissed in limine.

