(2002) 05 P&H CK 0042

In the Punjab And Haryana At Chandigarh

Case No : CCES No. 31 of 2002 (O and M)

Commissioner of C. Ex., Delhi-III — APPELLANT

Vs

S.B. Packaging Ltd. — RESPONDENT

Date of Decision : 13-05-2002

Acts Referred:

Central Excise Rules, 1944 — Rule 57Q
Central Excises and Salt Act, 1944 — Section 35H(1)

Citation : (2002) 143 ELT 503

Hon'ble Judges : N.K. Sud, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Rajesh Gumber, ACGSC, for the Appellant;

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—This is a petition u/s 35H(1) of the Central Excise Act, 1944. Respondent No. 1 claimed Modvat credit of Rs. 21,938/- in respect of goods i.e. switches and push button, switches and controllers and change over panel switches. The claim was disallowed by the Assessing Authority. This order was reversed by the Commissioner, Central Excise (Appeals) vide order dated June 29, 1999. The Revenue''s appeal was dismissed by the Tribunal vide order dated March, 27, 2000. Hence this petition.

2. The Revenue maintains that the following question of law arises for the opinion of this Court :

"Whether the learned Tribunal is correct in holding that the goods i.e. switches and push button, switches and controllers and change over panel switches are the capital goods as defined under Rule 57Q of the Central Excise Rules, 1944?"

3. There is a delay of 196 days in filing the petition. An application for condonation of delay has been filed. It has been inter alia averred that the petitioner had approached the Delhi High Court. Thus, the delay had occurred.

4. On merits, it has been stated that the case is concluded against the Revenue by the decision of their Lordships of the Supreme Court in Commissioner of Central Excise Coimbatore and Others Vs. Jawahar Mills Ltd. and Others, .

5. Even if we overlook the delay in filing the petition, the claim of the Revenue cannot be sustained in view of the authoritative pronouncement of their Lordships of the Supreme Court. Resultantly, the petition is dis missed in limine.