(2009) 04 MAD CK 0572

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 3229 of 2005

Commissioner of C. Ex., Pondicherry APPELLANT

Vs

Sharadha Castings (P) Ltd. RESPONDENT

Date of Decision : 17-04-2009

Acts Referred:

Central Excise Rules, 1944 — Rule 57F(17), 57H(7)
Central Excises and Salt Act, 1944 — Section 3A

Citation : (2012) 277 ELT 37

Hon'ble Judges : Prabha Sridevan, J;M. Sathyanarayanan, J

Bench : Division Bench

Advocate : S. Thirumavalavan, SCGSC, for the Appellant; J. Sankar Raman, for the Respondent

Final Decision : Dismissed

Judgement

Prabha Sridevan, J.—The appellants are engaged in the manufacture of Non-alloy steel falling under Chapter sub-heading 7206.90 of the first Schedule to the Central Excise Tariff Act, 1985. They had a stock of 1966.031 M.Ts. of inputs lying in stock and 69.54 M.Ts. of steel ingots contained in the finished products lying in stock as on 1-8-1997. With the introduction of Section 3A of the Central Excise Tariff Act, manufacturers like the respondents are to pay duty under the Compounded Levy Scheme. As per Notification No. 33 of 1997-C.E. (N.T.), dated 1-8-1997, the Modvat credit available as on the 1st day of August 1997 shall lapse and it shall not be allowed to be utilized for payment of duty on excisable goods. A show cause notice was issued on 3-1-2000 by the Superintendent of Central Excise, Range-IV, Cuddalore, to recover the Modvat credit of Rs. 19,99,949/- taken on the inputs lying in stock and on the inputs contained in the finished goods lying in stock as on 11-8-1997. After considering the assessee''s reply, the Assistant Commissioner of Central Excise, Cuddalore, confirmed the demand. As against that, the assessee went in appeal before the Commissioner Appeals. The appellate authority, following 2001 (138) ELT 296 came to the conclusion that in view of Rule 57H(7) read with 57F(17)(c) and since the assessee had come under the Compounded Levy Scheme and since they had not opted for exemption from payment of duty, their case was covered by the decision cited supra and allowed the appeal.

2. The Department moved the Customs, Excise and Service Tax Appellate Tribunal, Chennai, which held that the issue no longer res Integra. Against that, the present appeal has been filed by the Department on the following substantial question of law :-

1. Whether the Commissioner (Appeals) and Appellate Tribunal are correct in interpreting the Modvat Credit Rules vis-a-vis Section 3A of the Central Excise Act, 1944? and

2. Whether the credit of duty attributable to the inputs, after the introduction of Section 3A can be recovered under Rule 57(1) of erstwhile Central Excise Rules 1944 or not?

Rule 57F(17)(c) of The Central Excise Rules, 1944 reads as follows :

Rule 57F(17) (a)...

(b)...

(c) on the first day of August, 1997, with the manufacturer of ingots and billets of non-alloy steel falling under heading Nos. 7206.90 and 7207.90 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), and who is required to pay duty u/s 3A of the Central Excise Act, 1944 (1 of 1944), shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export,

Rule 57H(7) refers to a manufacturer who opts for exemption from payment of whole of the duty and states that such manufacturer shall be required to pay an amount equivalent to the credit, if any, allowed to him in respect of the inputs lying in stock or used in any finished excisable goods lying in stock. It is not the case of the Department that the respondent is a manufacturer who opted for exemption from payment of whole of the duty. In fact, the Tribunal in its order had observed that the assessee had come under the Compound Levy Scheme with effect from 1-8-1997 and when they switched over to this, the credit lying unutilised, be in the inputs or in the final products, lapsed in terms of sub-rule (17) of Rule 57F of the Central Excise Rules, 1944. The Tribunal is therefore correct in its conclusions. We are unable to accept the objections raised by the appellant. In our opinion, the substantial questions of law do not arise for consideration in this appeal. Accordingly, the appeal is dismissed.

