(2002) 05 P&H CK 0139

In the Punjab And Haryana At Chandigarh

Case No : CCES No. 32 of 2002 (O and M)

Commissioner of Central Excise APPELLANT

Vs

Bhiwani Textile Mills and Another RESPONDENT

Date of Decision : 13-05-2002

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35H

Citation : (2002) 82 ECC 470

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

Bench : Division Bench

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 is engaged in the manufacture of cellulosic and non-cellulosic spun yarn. It had availed Modvat credit for different amounts. The claim was disallowed by the Assistant Commissioner vide order dated August 8, 1996. The assessee filed an appeal. Relying upon the decision of the Tribunal in an earlier case, the assessee''s claim was accepted. The Revenue''s appeal before the Tribunal having failed, it has approached this Court through the present Petition. The Revenue maintains that the following question of law arises for the opinion of this Court:

Whether Modvat credit can be allowed on Electric motors, winding wires of copper and cables under Rule 57Q of Central Excise Rules, 1944 prior to 23.7.1996, whereas during the material period these goods were not specified as capital goods under Rule 57Q for grant of Modvat credit and the goods are not used directly for processing or bringing about any change in any substance for the manufacturing of finished goods?

2. There is a delay of 303 days in filing the petition. An application for condonation of delay has been filed. It has been averred that the petitioner had wrongly approached the Delhi High Court. Thus, the delay had occurred.

3. 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, .

4. 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 dismissed in limine.