
(2009) 01 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Case No : Central Excise Appeal No. 19 of 2004

Commissioner of Central Excise

APPELLANT

Vs

Bright Brothers Limited

RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11AC, 35G

Citation : (2009) 164 ECR 123 : (2009) 236 ELT 660

Hon'ble Judges : M.M. Kumar, J;H.S. Bhalla, J

Bench : Division Bench

Advocate : Kamal Sehgal, for the Appellant; M.P. Devnath and Sandeep Goyal, for the Respondent

Final Decision : Dismissed

Judgement

H.S. Bhalla, J.—The revenue has knocked at the door of this Court by invoking Section 35(G) of the Central Excise Act, 1944 (for brevity, the Act), challenging the judgment dated 19.12.2003 (P-2) and order dated 9.2.2004 (P-3) passed by the Customs, (sic) Excise & Service Tax Appellate Tribunal, New Delhi (for brevity, "the Tribunal"). It has claimed that the following substantial questions of law would arise for determination of this Court:

(i) Whether a manufacturing unit, providing capital

goods to a buyer who has interest in the manufacturing unit's business, without entering into a financial arrangement , i.e., loan agreement, and provides finance for value and Central Excise duty of the capital goods to the buyer, fall outside the purview of Rule 57 R(3) as held by Tribunal?

(ii) Whether Modvat credit of capital goods acquired by manufacturer on loan from a finance company be allowed, if the assessee has not followed the prescribed procedure under Rules 57R(3)?

(iii) Whether penalty equal to the duty determined can be imposed u/s 11AC of

the Central Excise Act, 1944 in such cases?

2. The detailed facts are not required to be given in this judgment in order to avoid repetition since they have been recapitulated in the judgment dated 19.12.2003 (P-2) passed by the Tribunal. However, the facts required to be noticed for the disposal of this appeal are that the credit of Rs. 23,21,193/- was denied on the capital goods pertaining to Invoice No. E-112-A dated 16.9.1999. Similarly, credit of Rs. 1,49,06,078/- was denied in respect of goods covered by Bills of Entry Nos. 321287 and 321298 both dated 24.9.1999 and Invoice No. E/4863 dated 23.11.1999. The denial of these credits has been made for failure to satisfy the procedure set out in Rule 57R 3(ii)(b) of the Rules.

3. Learned Counsel appearing for the appellant has vehemently argued that the Tribunal has erroneously allowed the appeal filed by the assessee and as such, the impugned order dated 19.12.2003 (P-2) passed the Tribunal is liable to be set aside. Learned Counsel has further assiduously argued that the Tribunal fell in error by holding that loan granted by M/s Maruti Udyog Limited, Gurgaon (hereinafter referred to as MUL") to the respondent for Item No. 1 involving the Central Excise Duty amounting to Rs. 23,21.193/-does not fall within the ambit of Rule 57R(3)(ii)(b) of the Rules. Learned Counsel has further argued that the respondent did not fulfil the conditions laid down in Sub-rule (3)(ii)(a) of the Rules wherein the credit could be availed on the capital goods procured against the agreement made for the cost of capital goods excluding the specified duty. Learned Counsel further pointed out that the respondent-Company never filed a copy of the invoice to the department and finally, it was prayed that the impugned orders passed by the Tribunal be set aside.

4. Per contra, it was argued by the learned Counsel appearing for the respondent -Company that the benefit on Modvat credit goods can not be denied to them as they have purchased goods from MUL and MUL is a manufacturing unit and not a finance company, therefore, Rule 57R(3) of the Rules is not applicable in this case. Learned Counsel has further submitted that the impugned order passed by the Tribunal regarding denial of the credit has been made for failure to satisfy the procedure set out in Rule 57R(3) of the Rules is not applicable in this case. Learned Counsel has also pointed out that sub clause in question was applicable in case of acquisition of capital goods wherein specified duty, i.e., modvatable duty, is also financed by a Financing Company. Learned Counsel has further contended that the transaction relating to Invoice No. 1128 dated 1.6.1999 was with MUL, which is not a Finance Company and therefore, provisions of Sub-rule (3)(ii)(b) of Rule 57 of the Rules can not at all be attracted to the transaction and finally, it was prayed that the appeal deserves to be dismissed.

5. We have heard learned Counsel appearing for the parties at a considerable length and also gone through the paper book with their assistance meticulously.

6. Having gone through Invoice No. 1128 dated 1.6.1999, we find that the transaction relating to this Invoice was with MUL and it is also an admitted

position before us that MUL is not a finance company, learned Counsel for the revenue has not been able to produce any material on the record on the basis of which it could be ascertained that MUL is a finance company. In such like circumstances, we are of the considered opinion that provisions contained in Sub-rule (3)(ii)(b) of Rule 57 of the Rules are not attracted to the transaction. A finding in this regard has rightly been recorded by the Tribunal while passing order dated 19.12.2003.

7. Learned Counsel appearing for the respondent has rightly pointed out that all the goods in question have been received under Invoice E-1128 dated 1.6.1999 and the receipt of the goods is not the subject matter of challenge in the instant appeal and as such, there is no occasion of denial of credit. He has taken us through the Invoice in question, which clearly spells out that the description of receipt of various goods is explicitly noted therein and it proves beyond doubt that the credit had been taken in RG-23C Part II vide entry No. 772 dated 1.6.1999. In the facts and circumstances as set out in the appeal, it is abundantly clear that the credit did not attract the provisions as embodied in Rule 57R(3)(ii)(b) of the Rules. The fact of having received the amount of Rs. 23,21,193/- as excise duty from the respondent is clearly evident from Invoice E-1128 dated 1.6.1999 issued by MUL in the name of the respondent. The finding recorded by the Tribunal, in our considered view, does not suffer from any legal infirmity, which may warrant interference by this Court and therefore, the modvat credit can not be denied to the respondent merely on the ground that a particular procedure was not followed. We are further of the view that even if a particular procedure has not been followed, that would not stand in the way of assessing respondent in any manner, especially when it has been proved that the revenue has received the amount as excise duty and as such, it can easily be deduced that no loss of any kind has been occurred to the department in any manner.

8. Learned Counsel appearing for the revenue has not been able to show any irregularity or impropriety in the impugned orders passed by the Tribunal, which have resulted in flagrant miscarriage of justice, which need to be set right by this Court.

9. In the light of what has been observed above, appeal filed by the Revenue, being without any merit, fails and is hereby dismissed.