**(2001) 11 P&H CK 0130**

**In the Punjab And Haryana At Chandigarh**

**Case No :** C.C.E.S. No. 57 of 2001

Commissioner of Central Excise — APPELLANT

Vs

Customs Excise Gold (Control) Appellate Tribunal and Another — RESPONDENT

**Date of Decision :** 22-11-2001

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

**Citation :** (2002) 79 ECC 756

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

**Bench :** Division Bench

**Final Decision :** Dismissed

# Judgement

Jawahar Lal Gupta, J.—The respondent is engaged in the manufacture of Tractor and Railway Parts. It claimed modvat credit. The claim for an amount of Rs. 10398.32P was disallowed by the adjudicating authority. The respondent''s appeal was accepted by the Commissioner (Appeals). Aggrieved by the order the Revenue approached the Tribunal. The appeal having been dismissed, it filed a petition u/s 35G of the Central Excise Act, 1944 for a reference to this Court. The petition was dismissed. Hence this petition.

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

Whether challan issued by ''Sail'' which are endorsed for part consignment are valid document under Rule 57-G for availing Modvat Credit in contravention of order Trade Notice No. 33-CE/92 dt. 4-8-92 of Chandigarh Collectorate wherein, it was stipulated that invoices/challans issued by stockyard of Integrated steel plants are valid documents for availing modvat credit only if entire consignment is endorsed to the consignee.

3. We have heard learned Counsel for the Revenue.

4. Mr. Sehgal submits that since the entire consignment had not been endorsed

 

to the assignee, the claim was wrongly sustained by the Tribunal. Is it so?

5. It has been found that the quantity sold to the respondent was specified. Thus, out of the total quantity covered by the voucher the quantity given to the respondent was known. Modvat credit was claimed only in respect of the quantity which had been duly delivered to the respondent. This view as taken by the Tribunal is just and fair. It is not arbitrary. It has not led to injustice.

6. There is another aspect of the matter. The total amount involved in the case is only Rs. 10392.32P. Two authorities in the Department have taken a possible view. No provision of law is shown to have been violated.

7. In the circumstances of the case, we are not satisfied that any question of law requiring the opinion of this Court arises. It may also be noticed that the Tribunal has relied upon its earlier decision dated January 23,1995. On November 7,2001 we had adjourned the case for today to enable Mr. Kamal Sehgal to ascertain as to whether or not the Revenue has challenged the order. Mr. Sehgal informs us that he has received no information despite his having sent a communication. If the Department has not challenged the earlier order, we find no justification for its taking a different view in this case. In any event, on merits we have found no ground to grant the prayer of the Revenue. Resultantly, this petition is dismissed in limine.